(20,994.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 261.

ALBERTO WILL, DOING BUSINESS UNDER THE NAME OF WILL & COMPANY; FREDERICK MIDGLEY, ALFRED MIDGLEY, AND LEWIS MIDGLEY, DOING BUSINESS UNDER THE FIRM NAME OF DAVID MIDGLEY & SONS, ET AL., APPELLANTS,

vs.

JOAQUIN TORNABELLS, DOING BUSINESS UNDER THE FIRM NAME OF J. TORNABELLS & COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 In the District Court of the United States for Porto Rico.

At a stated term of the District Court of the United States for Porto Rico began and held at the court-rooms of said Court, in the City of San Juan, on the eighth day of April, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred and thirty first—present, the Honorable Bernard S. Rodey, Judge—among the proceedings had was the rendition of a final decree in the following cause, to wit:

ALBERT WILL ET AL.
vs.
J. TORNABELLS ET AL.

Be it remembered that heretofore, to wit, on the twenty-third day of June, one thousand nine hundred and two, came the complainants by their solicitors and filed in the Clerk's Office a Bill of Complaint in this cause, which said bill of complaint is as follows, to wit:

Bill of Complaint.

2 In Equity.

ALBERTO WILL, a citizen of the Republic of Cuba, Doing Business in the City of Havana, Cuba, under the Name of Will & Company; FREDERICK MIDGLEY, ALFRED MIDGLEY, and LEWIS MIGDLEY, Aliens and Loyal Subjects of the King of Great Britain and Ireland, Doing Business in the City of Manchester, England, under the Firm Name of David Midgley & Sons, and GUILLERMO CORTADA, RAMON CORTADA, and FERNANDO TORO, Citizens of Porto Rico, Doing Business in the City of Ponce, Porto Rico, under the Firm Name of Ramón Cortada & Company, Complainants,

v.

JOAQUIN TORNABELLS, Alien and a Loyal Subject of the King of Spain, and CARLOS DOITTEAU, Alien and a Citizen of the Republic of France, Residents of Porto Rico and Doing Business in the City of Mayaguez, Porto Rico, under the Firm Name and Style of J. Tornabells & Company; LUIS ARAN Y LANCI, an Alien and Citizen of the Republic of France, Whose Place of Residence is to Complainants Unknown; ALFREDO SALIVA, Alien and a Loyal Subject of the King of Italy, Residing in Mayaguez, Porto Rico; BANDELIO DURAN Y CAT, an Alien and Loyal Subject of the King of Spain, Residing in the City of Ponce, Porto Rico, and JUAN COLL Y SOLER, an Alien and Loyal Subject of the King of Spain, as partners Trading under the Firm Name and Style of Duran & Coll; RAIMUNDO VALDECILLO, an Alien and Loyal Subject of the King of Spain, Residing in the City of Ponce, Porto Rico, Defendants.

To the Honorable William H. Holt, Judge of the United States District Court in and for Porto Rico:

Alberto Will, a citizen of the Republic of Cuba, doing business in the city of Havana, Cuba, under the name of Will & Com-

3 pany; Frederick Midgley, Alfred Migdley and Lews Midgley, aliens and loyal subjects of the King of Great Britain and Ireland, doing business in the city of Manchester, England, under the firm name of David Midgley & Sons; and Guillermo Cortada, Ramón Cortada and Fernando Toro, citizens of Porto Rico, doing busines in the city of Ponce, Porto Rico, under the firm name of Ramón Cortada & Company, bring this their creditor's bill in behalf of themselves and all other creditors who may be entitled to join herein, and who will come in and contribute to the expenses of this suit, against Joaquín Tornabells, alien and a loyal subject of the King of Spain, and Carlos Doitteau, alien, and a citizen of the Republic of France, residents of Porto Rico, and doing business in the city of Mayaguez, Porto Rico, under the firm name and style of J. Tornabells & Company; Luis Aran y Lanci, an alien and citizen of the Republic of France, whose place of residence is to complainants unknown; Alfredo Saliva, alien and a loyal subject of the King of Italy, residing in Mayaguez, Porto Rico; Candelio Duran y Cat, an alien, and loyal subject of the King of Spain, residing in the city of Ponce, Porto Rico; and Juan Coll y Soler, an alien and loyal subject of the King of Spain, as partners trading under the firm name and style of Duran & Coll; and Raimundo Valdecillo, an alien and loyal subject of the King of Spain, residing in the city of Ponce, Porto Rico,—defendants.

And thereupon your orators complain and say that on and before the beginning of the year of our Lord one thousand nine hundred, the defendant J. Tornabells & Company were indebted to the respective complainants in this suit in the several sums represented

4 by the respective judgments subsequently obtained thereon, as hereinafter set forth; that said indebtedness being all long overdue, your orators severally brought suit thereon, on the law side of this court, against the said partners as composing the said defendants firm of Joaquin Tornabells & Company, and thereafter severally recovered judgments in the said suits on the dates and for the respective amounts following, to wit: Your orator, Albert Will, for the sum of twelve thousand four hundred and sixty-six dollars and thirty-seven cents damages, and twenty-six dollars and thirty-five cents costs, on the twenty-second day of April of the year of our Lord one thousand nine hundred and two; Your orators David Midgley & Sons, for the sum of four thousand six hundred and ninety-five dollars and thirty cents damages, and nineteen dollars and fifty cents costs, on the same twenty-second day of April of the year of our Lord one thousand nine hundred and two; and your orators Ramón Cortada & Company, for the sum of three thousand four hundred and eleven dollars and forty-two cents damages, and twenty dollars and thirty-five cents costs, on the twenty-first day of January of the year of our Lord one thousand nine hundred and two; all of which will more fully appear from the records of said several judgments now remaining on the law side of this honorable court, reference to which is hereby prayed for all necessary purposes, and that executions have been issued upon each of said judgments and placed in the hands of the marshal of this honorable court, but not sufficient property can

be found belonging to and held in the name of said defendants J. Tornabells & Company, upon which to levy said judgments.

Your orators further represent unto your honor that at the time of the creation of said indebtedness, J. Tornabells & Company
5 were seized and possessed of in fee simple a large amount of valuable real estate, and on the day last aforesaid they executed and delivered a deed of conveyance for twenty-six parcels of real estate to the defendant Luis Aran y Lanci for a pretended consideration of one hundred and ninety-seven thousand and seven hundred pesos provincial money, of which amount the said Luis Aran y Lanci pretended to have received in cash the sum of thirty thousand pesos provincial money, and the balance, one hundred and sixty seven thousand seven hundred pesos provincial money, was agreed to be paid within ten years at the rate of sixteen thousand seven hundred pesos provincial money per year, without interest or other increase. A more particular description of each of the said twenty-six parcels of real estate being hereto attached, marked Exhibit A, and made a part of this, your orators' bill of complaint.

Your orators further represent unto your honor that the aforesaid twenty-six parcels of real estate greatly exceeds in value the sum of one hundred thousand dollars United States currency.

Your orators further represent unto your honor that afterward, to wit, on the thirteenth day of September of the year of our Lord, one thousand nine hundred and one, the said defendants' firm of J. Tornabells & Company, executed before a Notary Public a further instrument whereby they pretended to acknowledge payment by and receipt from the said defendant Luis Aran y Lanci of the said balance of one hundred and sixty-seven thousand seven hundred pesos provincial money, which was, according to their deed of the second day of May of the year of our Lord one thousand nine hundred, to be paid in ten annual instalments.

6 Your orators further represent unto your honor that on the eleventh day of May of the year of our Lord one thousand nine hundred, the said defendant Luis Aran y Lanci executed and delivered to the defendant Bandelio Duran y Cat a mortgage upon fourteen of the aforesaid twenty-six parcels of real estate, being the same parcels described under numbers seven to twenty, inclusive, in said Exhibit A, to secure a pretended indebtedness of one hundred and thirty thousand pesos provincial money, with interest at the rate of six per cent. per annum; and by the same instrument mortgaged to said defendant firm of Duran & Coll five of said parcels of real estate, being the same parcels described under numbers one to five inclusive in said Exhibit A, to secure a pretended indebted- of twenty thousand pesos provincial money, with interest at the rate of nine per cent. per annum.

Your orators further represent unto your honor that on the —— day of —— of the year of our Lord one thousand nine hundred and one, the said defendant firm of Duran & Coll made a mortgage of their said alleged interest to the extent of twenty thousand pesos provincial money in the five parcels of real estate hereinbefore de-

scribed to the defendant Raimundo Valdecillo y Córdoba, to secure an alleged indebtedness of six thousand pesos provincial money.

And your orators further represent unto your honor that they are informed and believe that, and so allege, that each and every of the foregoing transfers, conveyances, or mortgages, except the last mentioned mortgage from Duran & Coll to Raimundo Valdecillo y Córdoba, were not and are not legitimate and *bona fide* transactions, but were and are simulated, feigned and fraudulent, were without any legal consideration to support them, and were executed as a part of a fraudulent plan and purpose to hinder and
7 delay your orators and the other creditors of the said firm of J. Tornabells & Company, and to prevent the collection of their debts; and that as to the said mortgage from the said firm of Duran & Coll to the said defendant Raimundo Valdecillo y Cordoba, your orators are ignorant as to the consideration, if any, upon which the same was given; but as the title of said Duran & Coll to the said mortgage for twenty thousand pesos was entirely feigned and fraudulent, your orators allege, upon information and belief, that defendant Raimundo Valdecillo y Cordoba had notice of said fraud, if he did not actually participate therein, whereby any right or lien which he may have by virtue thereof should be subordinated to the lien of your orators' judgments upon the property described in said Exhibit A.

Your orators further represent that previous to the said year of one thousand nine hundred, the defendant firm of J. Tornabells & Company had been engaged in a merca-tile business in the city of Mayaguez, Porto Rico, of large amount and importance, and that on or about the time of the said simulated and fraudulent conveyance of the twenty-six tracts of land aforesaid by said firm to said defendant Luis Aran y Lanci, to wit, about the first day of May, nineteen hundred, said defendant firm of J. Tornabells & Company also transferred their said mercantile business in the name of said defendant Luis Aran y Lanci, and said business has since been still is being carried on in his name; but your orators aver that the said Joaquin Tornabells and Carlos Doitteau have always continued to be and now are in the active control and active management of said commercial business, and also of the said twenty-six parcels of real estate described in Exhibit A; that said defendant Luis Aran
8 y Lanci was not in the island of Porto Rico at the time of the transfer to his name of their property as hereinbefore alleged, but was represented in all of the said transfers by the said defendant Alfredo Saliva, his attorney in fact, and that the said defendant Alfredo Saliva has ever since been and still is the attorney in fact of said Luis Aran y Lanci, and in that capacity has full authority to represent his said principal in all matters whatsoever, including the prosecution and defense of legal proceedings, and that said Luis Aran y Lanci has never since resided in Porto Rico or taken any active part in the management of said business or property, or been in the control of same. Wherefore, your orators allege that said defendant Luis Aran y Lanci holds the legal title to all of

said property described in Exhibit A upon a secret trust for the use and benefit of said defendant firm of J. Tornabells & Company, and that the said mortgages made by him and through the said defendant Alfredo Saliva, his attorney in fact and by the other defendants herein, were upon a like secret trust for the use and benefit of the said defendant firm of J. Tornabells & Company and for the unlawful and fraudulent purposes hereinbefore alleged.

Your orators further represent that at the time of the making of the said pretended conveyance of said property described in Exhibit A by said defendant firm of J. Tornabells & Company to defendant Luis Aran y Lanci, the said defendants J. Tornabells & Company were largely indebted, insolvent and at that time in suspension of payments, and had not the means of paying their said debts, and that the said conveyance and all the subsequent pretended mortgages and transfers hereinbefore described, with the exception aforesaid, were fraudulently made for simulated and pretended considerations and for the purpose of hindering and delaying and
9 defrauding your orators and their other creditors of their just and lawful debts.

Your orators further represent unto your honor that a considerable part of the said tract or parcels of land described in Exhibit A are suited for and devoted to the cultivation of sugar cane, and that other considerable parts are suited for and are devoted to the cultivation of coffee, and that said defendants J. Tornabells & Company are deriving a large yearly income from the growth and sale of the yearly crops from the aforesaid twenty-six parcels of land, which income should, in equity, and good conscience, be sequestrated by the appointment of a receiver by this honorable court for said property, so that the same may be held under the authority of this court and applied to the payment of said judgments of your orators, and such other creditors as may hereafter join in this proceeding, in case the conveyance by said defendants J. Tornabells & Company of the said properties shall be found to be fraudulent as herein alleged.

Forasmuch, therefore, as your orators are without remedy in the premises, except in this court of equity, and to the end, that the defendants may, if they can, show why your orators are not entitled to the relief hereby prayed and may make full direct and perfect answer to this Bill, but not under oath, the answer under oath being hereby expressly waived, that the said pretended deed of conveyance of the said twenty-six parcels of land hereinbefore described by defendants J. Tornabells & Company to defendant Luis Aran y Lanci, and all other subsequent mortgages and transfers, and parts of said property, to the other defendants, as hereinbefore alleged, may be declared to be fraudulent and void and may be vacated and annulled and for naught held, that said property and each and every
10 parcel thereof, may be decreed to be subject to the lien of your orator's several judgments, and in case of the non-payment of the same by the defendants J. Tornabells & Company by a short day to be fixed by the court, may be levied on and sold for the payment thereof; that a receiver may be appointed to take charge of said real estate and any other property of said defendants J. Torna-

bells & Company which may be subject to the lien of said judgments, to manage the same and to collect the rents and profits thereof, in order that the same may be applied, under the direction of the court, to the payment of your orators' judgments aforesaid; that the defendants and each of them may be enjoined from interfering with the possession of the receiver when appointed of said real estate and other property, and in the management and collection of the said rents and the profits thereof, and from themselves claiming, collecting or disposing of any of said rents and profits; that defendants and each of them may be further enjoined from bringing or prosecuting any suit or other claim for the enforcement of their alleged rights until further order of this honorable court; and that your orators may have such other and further relief as equity may require and as unto your honor shall seem meet.

May it please your honor to grant unto your orators a writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Joaquin Tornabells, Carlos Doitteau, Luis Aran y Lanci, Alfred Saliva, Bandelio Duran y Cat, Juan y Soler and Raimundo Valdecillo y Córdoba, and commanding each of them on a certain day and under a certain penalty in the said writ to be inserted, personally to be and to appear before your honor in this honorable court, and then and there full, true
11 and perfect answer make to all and singular the premises, and further to stand and to perform and abide all such further orders, direction and decree therein as to your honor shall seem meet, and shall be agreeable to equity and good conscience.

HORTON & CORNWELL,
N. B. K. PETTINGILL,
Solicitors for Complainants.

Exhibit A.

First. A lot situated on Comercio Street of this city and in the Marina Maridicional, measuring thirty varas (twenty-five metres, four hundred and thirty-seven mil-imetres) by the front, and one hundred and fifty-eight varas (132 metres, 63 mil-imetres) long. It is bounded on the western side by said Comercio Street, on its eastern side by a house of Don Francisco Guio Molina, on the south by the warehouse of Messrs. Schulze & Company, and on the north by the warehouse of Messrs. J. Tornabells & Company, which belonged to the heirs of Mr. Quintero, this warehouse being separated from the house hereinafter described by a narrow pass 85 centimetres wide. There is on this lot a house two stories high, the first floor (the lower) being built of bricks and the upper one of timber. It is roofed with galvanized iron and measures 16 metres and 88 centimetres on its western side, that is, the same side of Comercio Street; and 11 metres and 40 centimetres on its right hand side. This house has on its northern side, that is, the left hand side, and annexed to it a newly built brick room, same having an upper timber floor, and it is 14 metres and 30 centimetres long by 6 metres and 25 centi-

metres wide. On the yard of said house there is a timber hut,
12 roofed with galvanized iron, measuring 53 metres and 30 centimetres long on its southern side, and by the northern side it is 22 metres and 40 centimetres long on its widest side, and on its narrowest it measures 11 metres and 55 centimetres long on the western side and 7 metres and 70 centimetres on the eastern side; and another timber hut roofed with galvanized iron, being 70 metres and 50 centimetres from north to south and 9 metres and 90 centimetres from east to west.

Second. A lot situated on Comercio Street, barrio of La Marina Meridional of this city, which lot is 23 metres long on the northern side, 19 metres and 3 centimetres on the south, 18 metres on the east and 18 metres and 75 centimetres on the west, making in all a total of 386 metres and 55 centimetres. It is bounded on the north by lot of Doña Candelaria Gonzalez de Quijano; on the south by lot number 4 of heirs of Don José de Jesús Dominguez; on the south by the street on which it is located (Comercio Street), and on the west by the maritime zone. On this lot exists a house which is one story high at front and two stories high at the back, and which is roofed with galvanized iron. Said house measures 16 metres and 50 centimetres on the side of Comercio Street on which it is situated and 32 metres long from east to west. There are mounted in said house 16 machines for working on timber and wood, one a mill for grinding corn and two crushing-mills for coffee, with boiler and steam motor of seventy-five and twenty three horse power respectively.

Third. One parcel of plain land, planted in pasture, of 14 hectares, 91 areas and 58 centiareas (37 cuerdas and 95 hundredths) situated in the barrio of Guanajibo of this municipality. It is bounded on the north by lands of Don Diego García Rebolledo; on the south by the Guanajibo River; on the east by lands of
13 the plantation named "Estebanía," and on the west by narrow pass for the use of the plantation "Santa Ana," which separates lands of Don Diego García Saint Laurent, the land on which the establishments of the said estate are raised and the Guanajibo river.

Fourth. A lot which is 20 metres long on each of its side, making thus an area of 400 square metres, situated on Comercio Street, barrio of La Marina Meridional of this city. It is bounded on the north by Mr. Esteban Nadal's shed; on the south by another lot marked with number 2, which belongs to Doña Candelaria Gonzalez de Quijano; on the east by the said Comercio Street; and on the west by the warehouse of the public works.

Fifth. Another lot of an area of 389 metres and 40 centimetres, that is, on the east and west 15 metres, and 56 centimetres more on the western side; on the north 28 metres and on the south 23 metres, 92 centimetres. Said lot is situated on Comercio Street, barrio of La Marina Meridional of this city, and is bounded on the north by lot number one of said lady Gonzalez de Quijano, and by the warehouse of the public works; on the south, by lot number 3, acquired by Messrs. J. Tornabells & Company in a public sale; and on the east by Comercio Street, and on the west by the maritime zone.

Sixth. A lot situated on Comercio Street, barrio of La Marina Meridional of this city, and which is 4*p* varas and 60 hundredths, or 34 metres, long on the front, and 84 varas and 81 hundredths, or 70 metres and 90 centimetres, long on the sides. It is bounded on the north by property which now belongs to Don Salvador, Don Felix, Doña Carmen, Doña Altagracia and Doña Dolores Nadal y Martinez and Don José Rafael Esteban Martinez y Nadal; on the south by a property of Don Joaquin Tornabells, which now is of Señor Aran; and on the west by Comercio Street, on which it is situated, on which property two houses are built for warehouses, one built of timber and the other of bricks.

Seventh. A coffee estate named "Josefa," situated in the barrio of Naranjales, municipality of Las Marias, of 165 hectares, 46 areas and 95 centiareas and 39 miliares, which are equivalents to 421 cuerdas, and 66 hundredths. Being planted in coffee, bruiers, for a steam machine, six horses and a half power, with a decortricating their small houses covered with zinc, a timber and zinc house with a steam machine, six horses and a half power, with a decortricating machine, fanning mill, crushing mill and a tank; one timber house roofed with zinc, one deposit for wood roofed with zinc, eight houses (called cuartels) for laborers, one shed covered with zinc for animals, eight small houses for laborers and two wells. Said estate is bounded on the west by lands of Don Juan Delgado y Delgado on the east, by the quebrada (brook) "Matadero," by lands of Don José A. Fernandez, lands of the plantation "Oliva," lands of Don Ruperto Hernandez and by the estate "Anita"; on the north by lands of Don Susebio Bayron and lands of Doña Isabel Bayron or Don Francisco Marrero, and on the south by lands of Nestor Gregory and Julia Bernard y Lacourt and the estate named "Retiro."

Eighth. Coffee plantation named "Porvenir" or Capaes" and also "Cristina," situated in the barrio of Furnias number three, municipality of Las Marías, which has for its uses a house, another house with a mill for decorticating and crushing coffee, five explanades with corresponding small houses, three houses for laborers, eighteen small houses roofed with zinc and "yaguas" and one stable. It has an area of three hundred and seventy (370) cuerdas of land, equivalent to 145 hectares, 42 ares and 44 centares. It is bounded on the north by the river called "Guabas"; on the west by a Quebrada" of Mr. Baud, another of Doña Carolina Bijou, and another of Nepomuceno Soto; on the south by property of Don Victo Lacoste, Don Domingo Valentin and on the west by a property of Don Guillermo Bryan.

Ninth. A property planted in coffee, bananas, pasture and briers, which is named "Paz," and was named before "Fraternidad," situated in the barrio of Cañas of this municipality. It has an area of 181 cuerdas and 21 hundredths of land, being equivalents to 71 hectares, 22 areas and 27 square centares, to this area has been reduced the extension of the said estate, which was before of about 200 cuerdas. It is bounded on the north by the vecinal road and the old road of Las Marías, marked with a stick of "emajagua," starting from the east to the other stick of "emajaguas," which is on

the west; on the east, and starting from said stick of "emajaguas," to another stick of higuerillo; by the coffee estate of Don Manuel Graña; on the west is bounded as follows: from said emajagua stick to one of granadillo and another of "Laurel," which is on the southern streme, being bounded by the coffee plantation of Don José Agustin and Don José A. Maristini; on the south by the river "Cañas," from the "Laurel" to the said "higuerillo." Said property has a house two stories high, covered with galvanized iron, another house of same materials and of one floor, a kitchen with a brick oven, iron roofed, having a mill for decortricating coffee and tanks, two explanades with small houses covered with galvanized iron, one house (cuartel) for laborers, one shed for laborers, and
16 kitchen roofed with iron, another shed for washing with same roof, and a cart. All this being in bad condition.

Tenth. A coffee plantation called "Atalaya" of 135 cuerdas of land, being equivalent to 53 hectares, 6 ares, 2 centares, and 65 milares, situated in the barrio of Naranjales of this municipality. It is bounded on the west and south by a property of Messrs. Patxot, Castelló & Co.; another of Don Francisco Soler; on the east by a plantation of Don Manuel Graña and on the north by the river Cañas and plantation of Messrs. Falbe & Company, with its establishments, one mill for decortricating and crushing coffee, explanades and other accessories.

Eleventh. Another parcel of land, situated in the before said barrio of Naranjales, forming one same property with the one hereinbefore described, and from which it is separated by the road of El Limón. It has an area of 30 cuerdas, equivalents to 11 hectares, 79 ares, 11 centares and 70 milares. It is bounded on the east by the road of El Limón and by the rustic properties of Don Enrique Brugman and Don Francisco Rivera; on the north by the old road of Naranjales; on the west, by a plantation of Don Francisco Soler and on the south by another property of Don Antonio Traleal.

Twelfth. A coffee estate, called "Veremos," of 132 cuerdas and 45 hundredths of land, equivalents to 52 hectares, 5 ares, and 79 centares, situated in the barrio of Rio Cañas Arriba, of this municipality. It has a brick and timber house with kitchen and other dependencies, 3 explanades with their small timber houses, an exen mill to decortricate coffee, tanks, two long houses for laborers and some more small houses for animals. Said estate is bounded on the east by lands of Don Ernesto Suna, which was before of Don
17 Baudilio Suna, and by other lands of Don Agapito Ponce; on the north by lands of the plantation "Aurelia" of Messrs. Olivieri y Sobrino; on the west by the same estate "Aurelia," and on the south by lands of Don José Perez Diaz, which were before of Pascual Laplaza and Valentín Gordils, by the river Cañas, lands of sucesores to Santana Yrizarry, another lands of Don José María Yrizarry, by a quebrada (a brook), by lands of Don Lope Valdespina and other lands of Don Julian Lacourt, which were before of Don José Antonio Agostini.

Thirteenth. A piece of land situated in the barrio of Rio Cañas Arriba of this municipality, of eleven cuerdas and 75 hundredths,

equivalents to 4 hectares, 79 ares and 82 centares. It is bounded on the north by lands of Messrs. J. Tornabells & Company; on the south, by lands which were before of Don José Agostini and are now of Don Julio Lacourt; on the east by lands of Don Ernesto Suna and on the west by lands of Don José Perez y Diaz.

Fourteenth. A piece of land situated in the same barrio of Rio Cañas Arriba of this municipality, of one hectare, 57 ares and 21 centares (four cuerdas). It is planted in pasture and briers and is bounded as follows: On the north, by lands of Don Ernesto Suna; on the east, by lands of Don Juan Juan A. Agostino; and on the south and west by lands of Doña Carmen Ponce de Detres.

Fifteenth. Another piece of land situated in the same barrio of Rio Cañas Arriba of this municipality, of two cuerdas, equivalents to 78 ares, 60 centares and 78 milare[illegible] It is planted in pasture and is bounded on the north and west by lands of Doña Carmen Ponce de Detres; on the south, by other lands of Don José A.
18 Agostini; and on the east, by lands of Don Maximino Detres.

Sixteenth. A piece of land of 28 cuerdas and 98 hundredths and which are equivalents to eleven hectares 39 ares and 2 centares, situated in the barrio of Rio Cañas Arriba of this municipality, being planted in coffee, bananas and briers. It is bounded on the east by lands of Don Teofilo Olivieri; on the north, by the plantation, "Aurelia" of Olivieri & Sobrino; on the south, by property of Fernando Ciprian Laplaza; and on the west by said Fernando Laplaza's estate, and by lands of the property of Olivieri and Sobrino.

Seventeenth. A plantation called "Collera," situated in the barrio of Furnias number first, of the municipality of Las Marías, of (410) four hundred and ten cuerdas of land equivalents to one hundred and seventy-one hectares, eleven ares, and 72 centares and three miliares, more or less. It has a house and explanades, small houses and all other buildings. It is planted in coffee. It is bounded on the north by lands of Don Manuel Serrano and Don Francisco Eunasiní, by lands of Don Juan Bianchi Pagan Pagan, and by those of Don Buenaventura Rivera, which were before of Don Bruno Campos and by a rural road, named "Cuchilla de los ramos;" on the east by the same road and lands of Doña María Rosario Rodriguez; on the south, by lands of Don Lorenzo Martinez, before of successors to Don José Balladaces, lands of Don Francisco Gonzalez and of Don José Sabater; on the west, by lands of Don Rafael Torres and of Don Filipe Ponce, being it stated for a better finding of the property, that: on the other side of the said rural road and on the northern part exists as bounders, lands belonging to Don
Antonio Carlos, now belonging to Rafael Olivencia, Quintín
19 Cabras, now of Don Monserrate Ramirez; Aureliana Malaret now of Don Monserrate Ramirez, of Don Dionisio Martell Pedro Colon and Buenaventura Peña; and on the eastern side, also on the other side of the road, by lands of Don José Ramos and heirs to Mateo Colon.

Eighteenth. A piece of land situated in the barrio of "Altosano," site called "Las Arenas," municipality of Las Marías, of 42 hectares

5 ares, 51 centares and 6 miliares of land, planted in coffee, pasture. It has a timber house roofed with zinc, kitchen, of same materials, machinery moved by hand, for decortricating coffee, explanades, tank and a small house for washing coffee and keeping it; it is bounded on the north by the River Grande; on the east, by lands of heirs of Don Manuel Pagan and the plantation of Don Carlos Sufront; on the south, by said plantation of said Sufront; and on the west by the plantation of Felipe Ponce and Ciprian Soto.

Nineteenth. Two cuerdas of land in the barrio of Furnias, site of Las Arenas, municipality of Las Marías, being planted in pasture and briers, said two cuerdas being equivalents to 78 ares, 60 centares and 78 miliares; and are bounded on the north, south, east and west by lands of Messrs. J. Tornabells & Company, which are now of Señor Aran.

Twentieth. A rustic property of an extension of plain land, planted in pasture, of 25 cuerdas (9 hectares, 82 ares and 71 centares) situated in the barrio of Altosano, municipality of Las Marías. It is bounded on the east by the lands of Doña Telesfora Carlo, and on the south and west by lands of heirs of Don Juanico José de Sagardia, and on the north by the river Grande.

Twenty-first. A sugar cane estate, called "Retiro," situated in the barrio of Bajura, municipality of Cabo Rojo, actually having an extension of 162 hectares 26 ares, 48 centares. It has a timber house, roof tile, an old house built with same materials, another timber house roofed with galvanized iron, another house roofed with shingles, one house for laborers and a timber warehouse covered with galvanized iron, another timber house for a mill, covered with galvanized iron, a galvanized iron tank for the cane juice (the liquid extracted from the cane), a house for the apparatus to boil the juice and other utensils and sugar deposit, all being roof tile and galvanized iron. The described property is bounded on the east by lands of Don Gustavo Saint Laurent, which were segregate from the same property, now being described, on the north by a sugar cane plantation of Don Antonio Ramón Cabassa, by lands of the estate "Acasia" and other lands of the said Don Gustavo Saint Laurent and of heirs of Don Luis Doitau and other lands of heirs of Don José Rosa, planted in pasture; on the west by wood and pasture lands of heirs of Don Manuel Ramirez and other pasture and briers land of Don José María Cardona; on the south, by same lands of said Señor Cardona, another pasture and briers land of heirs of Don Nolasco Vega, and pasture and sugar cane lands of Don Manuel Ponce.

Twenty-second. A piece of sugar cane land, of one hectare, 91 centares, equivalents to 3 cuerdas and 12 hundredths situated in the barrio of Bajura, municipality of Cabo Rojo. It is bounded on the north by the river "Estero;" on the south by the estate of "Carmen" of heirs of Bello; on the west, by lands of Don Carlos Doitau, and on the east by lands of Don Julio P. Castro.

Twenty-third. A piece of plain land, planted in pasture, situated in the barrio of Bajura, municipality of Cabo Rojo, of 2 hectares, 30 ares, 91 centares and 10 hundredths of another centare. It is

bounded on the north by lands of Doña María Monserrate
21 Ythier; on the south, by lands of Don Francisco Bello; on the east, by lands of Don Manuel Badrena, and on the west, by other lands of Don Carlos Doitau.

Twenty-fourth. One parcel of land of 216 ares, 17 centares, equivalents to five and a half cuerdas, situated in the barrio of Bajura, municipality of Cabo Rojo. It is bounded on the north by the river "Estero," and by lands of heirs of Don Rafael Bello; on the south, by lands of Messrs. M. Badrena & Company, which were before of Don Manuel Yrizzarry and on the west by lands of the plantation named "Resignación" belonging to José María Cardona.

Twenty-fifth. A parcel of sugar cane land, of fifteen cuerdas, equivalents to five hectares, 83 ares and 55 centares, situated in the barrio of Bajura, municipality of Cabo Rojo. It is bounded on the north by the river "Estero;" on the south, by the estate named "Carmen" of heirs of Bello, and by lands of Moral Gonzalez & Company; on the east, by lands of Don Julio P. Castro, and on the west by lands of Messrs. J. Tornabells and Company, which are not of Señor Aran, the appearer.

Twenty-sixth. A piece of land without name, being dedicated to plant sugar cane and pasture and coffee of 4 hectares, 71 ares and 64 centares and 80 miliares, having a timber house, and they are equivalents to 12 cuerdas, situated in the barrio of Bajura, municipality of Cabo Rojo. It is bounded as follows: On the east by lands of Don Manuel Badrena and Don José María Cardona and of Doña María Monserrate Ythier, widow of Bello; on the south and west, lands of said lady, and on the north by lands of said lady and of Don Carlos Doitau and Ponce de León.

22 *Answer of J. Tornabells & Co.*

(Filed October 6, 1902.)

ALBERTO WILL ET AL.
vs.
JOAQUÍN TORNABELLS ET AL.

The Answer of Defendants J. Tornabells and Carlos Doitteau, Composing the firm of J. Tornabells and Company

These defendants now and all times saving to themselves any and all manner of benefit or exception or otherwise that can or may be taken to the many errors, uncertainties and imperfections in the said Bill contained and for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

That while it is true, as alleged in complainants' bill, that said Company was indebted to the complainants for the respective sums sued out in said bill, and while it is true, as alleged in said bill, that complainants recovered judgment against said defendant Company,

as alleged, it is not true that said Tornabells and Company have at any time executed any conveyances, assignment or other instrument to Luis Aran y Lanci for the purpose of hindering or defrauding said complainants or other creditors of said firm of Tornabells and Company.

These defendants say that while it is true that said firm of said Tornabells and Company, did, as alleged in said bill, execute and deliver a conveyance to said Luis Aran y Lanci to the twenty-six parcels of real estate situated as described in the exhibit attached to said bill, that said conveyance was not for a pretended
23 consideration but that it was and is a *bona fide* transaction and for a good and valuable consideration of 197,700 pesos provincial money, and that of said sum these defendants received from the said Luis Aran y Lanci in cash at and before the execution thereof the sum of 30,000 pesos, provincial money, and thereafter received from said Aran the sum of 50,310 pesos, provincial money as the value of the first three annual installments due as per the agreement between the said Tornabells and Company and the said Aran and also thereafter received the balance of the said 197,700 pesos provincial money. That said sums so received from said Aran were applied by said Tornabells and Company to the payment of their debts due by them to their creditors in the ordinary course of the liquidation of the affairs of these defendants. Defendants further say that the instrument executed by them on September 13, 1901, in which they acknowledged the payment by the said Luis Aran y Lanci, as set out in said bill, was so executed in accordance with and because of the foregoing payment by the said Aran, and was and is a valid and lawful receipt for money received as aforesaid, and was not and is not in any sense a pretended or fraudulent transaction.

Defendants further say that the mortgage executed by the said Luis Aran y Lanci to the said Baudilio Duran y Cat upon the said fourteen tracts of real estate was not given for the purpose of securing a pretended indebtedness of any amount but was and is a valid and lawful transaction between the said parties and was not and is not any part of any feigned or pretended or fraudulent transaction as in said bill alleged.

These defendants further say that the mortgage executed by the said Luis Aran y Lanci to the firm of Duran y Coll on five of the tracts of real estate, as set out in the said bill was not given
24 for the purpose of securing a pretended indebtedness of any amount, but was and is a valid and lawful transaction between the parties thereto and was not and is not any part of any feigned or pretended or fraudulent transaction as in said bill alleged, and that the assignment by the said Duran and Coll to the Raimundo Valdecilla y Córdoba of the said indebtedness to secure the said Valdecilla y Córdova in the payment of $6,000.00 was and is a legal and valid and subsisting transaction between the parties thereto.

These defendants further say that it is not true that any of the transfers, conveyances and mortgages executed by and between the

parties as set out in the said bill, are not legitimate and *bona fide* transactions, and that it is not true that any or all of said transactions were or are simulated, feigned or fraudulent, but that the same were each and every of them, legal and for a good and valuable consideration, and were not executed as part of any fraudulent plan or purpose to hinder, delay or defraud the complainants or any other creditors of the said firm of Tornabells and Company in the collection of their respective debts; that the mortgage by the said Luis Aran y Lanci to the said Duran y Coll was not in whole or in part a feigned and fraudulent one as alleged by the complainants, and that the mortgage or assignment by the said firm of Duran y Coll to the said Raimundo Valdecilla y Córdova basd thereon is a valid transaction and that no such fraud existed in the said transaction as alleged by the complainants, and that complainants should not be subrogated to any lien on the said property.

These defendants further say that while it is true that the said firm of J. Tornabells and Company was engaged in mercantile business in the said city of Mayaguez, as set out in said bill of complaints, and that on or about the 1st day of May, 1900, said
25 defendants firm of J. Tornabells and Company transferred their said business to said defendant, Luis Aran y Lanci, it is also true that said mercantile business has since been and still is being carried on in the name of said last named defendant, but that is it not true that the said defendants, J. Tornabells and Carlos Doitteau have since the date of their said transfer to said Luis Aran y Lanci remained in active control and management of said commercial business; that it is true that said commercial business has been since the day of the said transfer exclusively managed and controlled by the said Luis Aran y Lanci and his agents under him, but not in any sense by either member of the said firm of J. Tornabells and Company. Defendants say that it is not true that either said Joaquin Tornabells or Carlos Doitteau have continued to manage or control any or all of the said twenty-six parcels of real estate described in the said Exhibit A, attached to said bill, but that the same have been since the day of the said conveyance to the said Luis Aran y Lanci in his exclusive management and control and that of his agents under him; that it is not true that the said Aran was not in the Island of Puerto Rico at the time of the transfer to him of said real and personal property, as set out in said bill, and it is not true that said Aran was represented in the said transaction by the said defendant Alfredo Saliva, but that it is true that the said Luis Aran y Lanci was a resident of the Island of Porto Rico at the time of the said transaction and took part therein personally and that he, the said Luis Aran y Lanci, had been long before that time and still is a resident of said Island of Porto Rico, and has been continuously in said Island except during such time as he was absent therefrom for short periods, and that he is, and has been, as aforesaid, in the actual management and control of
26 said business and property. Defendants say that it is not true that said Luis Aran y Lanci holds the legal title to all or any of the property described in said Exhibit A, upon a secret or any other trust for the use and benefit of the said firm of J.

Tornabells and Company, but that the said Luis Aran y Lanci is the legal owner and holder in fee of all of said property, and has so held it since the same was conveyed to him as aforesaid; that it is not true that any of the mortgages executed by him were for the purpose of any secret trust for the use and benefit of the said defendant firm of J. Tornabells and Company or any other person whomsoever, or for the unlawful and fraudulent purpose alleged in said bill, but to the contrary said mortgages were, as aforesaid, legal and *bona fide* transactions for value between the said Luis Aran y Lanci and the said Baudilio Duran y Cat and the said firm of Duran y Coll for the use and benefit of the parties thereto.

These defendants further say that while it is true that they were largely indebted and in suspension of payment at the time of the execution of said conveyances and transfers to said Aran, as set out in said bill, that it is not true that said firm of J. Tornabells and Company was insolvent; that it is not true, as aforesaid, that any or all of said conveyances, assignments, transfers and mortgages were fraudulently many for any simulated or pretended consideration, or for the purpose of hindering, delaying and defrauding the creditors of said J. Tornabells and Company, of their just and lawful debts, but that each and every one of said transactions were and are as aforesaid, legal and *bona fide* transactions for the consideration and purposes therein set out.

These defendants further say that it is not true that the said J. Tornabells and Company are deriving any yearly or other
27 income from the growth and sale of the crops from the aforesaid twenty-six parcels of land, or from any part thereof, and that it is not true that the said J. Tornabells and Company derived or received any benefit from said twenty-six parcels of land since the time of their sale to said Luis Aran y Lanci except that it is true that if any such income is derived from the said land it belongs to and is derived and paid to the said Luis Aran y Lanci for his own use and benefit and that it should not be in equity or in good conscience sequestrated or applied to the liquidation of the judgment held by complainants against said firm of J. Tornabells and that no receiver should be appointed thereon.

These defendants further say that the said 197,700 pesos provincial money was the fair and reasonable value of said twenty six parcels of land at the time of said sale to said Luis Aran y Lanci on the terms the same was consum-ated and that the said land is not now reasonably worth the said sum.

Wherefore these defendants having fully answered, confessed traversed and avoided or denied all the matters in the said Bill of Complaint material to be answered, according to their best knowledge and belief, humbly pray this Honorable Court enter its judgment that these defendants be hence dismissed, with their reasonable costs and charges in this behalf wrongfully sustained and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

DEXTER & HORD,

Solicitors for defendants J. Tornabells and Carlos Doitteau, Composing the Firm of J. Tornabells and Company.

ISLAND OF PORTO RICO,
City of San Juan:

28 I, Joaquín Tornabells of the firm of J. Tornabells and Company, in liquidation, one of the defendants in the foregoing suit, do solemnly swear that the allegations contained in the foregoing answer are true.

J. TORNABELLS.

Subscribed and sworn to before me S. R. Palmer, a notary public in and for San Juan, Puerto Rico, this the 4th day of October A. D. 1902.

[NOTARIAL SEAL.] SANTIAGO PALMER,
Notary Public.

Answer of Defendant Luis Aran y Lanci.

(Filed October 6, 1902)

ALBERTO WILL ET AL.
vs.
JOAQUÍN TORNABELLS ET AL.

This defendant now and at all times saving to himself any and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, and for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to answer, answering says:

That it is not true that said J. Tornabells & Company executed and delivered to him, the said defendant Luis Aran y Lanci, any conveyance to the said twenty-six parcels of land, set out and described in said Exhibit A attached to said Bill, for a pretended consideration of 197,700 pesos, provincial coin, as alleged in said

29 bill, but that it is true that the said conveyance by the said J. Tornabells & Company was and is a legal and *bona fide* conveyance for the said twenty-six parcels of land for a valuable consideration, to wit, the said sum of 197,700 pesos, provincial money. This defendant says that it is not true that he pretended to pay the said J. Tornabells & Company the said sum of 30,000 pesos, provincial money, but that it is true in fact that he did actually pay the said firm of J. Tornabells & Company the said sum of 30,000 pesos, provincial money, on account of the said purchase of said land, and stipulated to pay his said vendors the balance of said purchase price, to wit, the sum of 167,700 pesos, provincial money, in ten equal annual payments of 16,770 pesos, provincial money, each, and that thereafter he paid and delivered to said J. Tornabells & Company the first three annual installments aforesaid amounting to 50,310 pesos, provincial money, and on or about September 26, 1901, paid and delivered to them an amount in American currency

to satisfy the balance due on said purchase price, and that by reason of said conveyance this defendant became and is the sole owner in fee of each and every one of said tracts of land.

This defendant further says that the aforesaid twenty six parcels of real estate did not exceed in value the said sum stipulated to be paid therefore including the interest on the deferred payments, but that the same was at that time a reasonable and fair valuation of said real estate, and of each and every parcel thereof. Defendant says that it is not true that said real estate at this time greatly exceeds in value the sum of $100,000.00 United States currency; that the reasonable and fair value of said real estate at the time of said transaction was the sum of 150,000 pesos, provincial money, and that the difference between that sum and the stipulated price was intended by the parties to said transaction to represent the reasonable increase of said sum during the time for which the payments, as
30 aforesaid, were deferred; that the reasonable value of said real-estate at this time is less than said sum of 150,000 pesos, provincial currency, and will not exceed the sum of 100,000 pesos, provincial currency. This defendant further says that the instrument executed by the said J. Tornabells and Company to this defendant on or about the 26th day of September 1901, wherein the said J. Tornabells and Company acknowledged to have received from this defendant the balance of 167,700 pesos, provincial money, was not executed for a pretended consideration, as alleged in said bill, but was and is a legal and binding receipt as set out, for a good and valuable consideration, to wit, the balance due to the said J. Tornabells and Company by this defendant, as aforesaid.

This defendant further says that at no time has he executed to the defendant Baudilio Duran y Cat, or to the firm of Duran y Coll, any pretended mortgage to secure any sum but that it is true that the mortgage executed by him to the said defendant, Baudilio Duran y Cat on 14 of the 26 parcels of land, as set out in said bill, was so executed to secure the *bona fide* amount of 130,000 pesos, provincial money, with interest thereon at the rate of six per cent per annum, which was and is owing by this defendant and due to said Duran; that it is true that this defendant executed to the said defendant firm of Duran and Coll a mortgage on the five parcels of land, set out and described as numbers 1 to five inclusives in said Exhibit A attached to said bill, to secure an indebtedness of 20,000 pesos, provincial money, with interest at the rate of 9% per annum, which said 20,000 pesos were in reality a debt due by said J. Tornabells and Carlos Doitteau to said firm of Duran and Coll and to secure the payment of which this defendant, at the instance of the said J. Tornabells and Carlos Doitteau, and as a matter of accom-o-dation to them, he being at that time largely indebted to
31 said firm and said fact was taken into consideration by them and this defendant at that time, executed said mortgage to said Duran y Coll with the understanding and assurance on the part of the said J. Tornabells and Carlos Doitteau that they would pay off and discharge the said 20,00- pesos provincial currency, and the

interest as aforesaid, as the same should become due; that the said J. Tornabells and Carlos Doitteau have heretofore paid to the said firm of Duran y Coll the sum of 10,000 pesos, provincial currency, and this defendant is informed and believes, and so alleges, that they still owe the balance of said sum.

Defendant says that by reason of the foregoing allegations this defendant is surety for the said J. Tornabells and Carlos Doitteau for the payment by them to the said firm of Duran & Coll of the balance due on the said sum of 20,000 pesos, and interest, as aforesaid. This defendant says that the foregoing transaction was not and is not in any sense a pretended one, but that it is and was a *bona fide* transaction for the consideration aforesaid.

This defendant further says that it is not true that any *of* all of the foregoing transfers, conveyances and mortgages are not legitimate and *bona fide* transactions, or were stimulated, feigned or fraudulent, but that in truth and in fact each and every one of them was legal and a *bona fide* transaction for a good and valuable consideration, as therein respectively set forth, and that it is not true that any or all of them were executed for a fraudulent purpose or plan of hindering or delaying the complainants herein or the other creditors of the said firm of J. Tornabells and Company in the collection of their debts. This defendant further says that in so far as concerns the mortgage or assignment executed by the said firm Duran y Coll to the said Raimundo Valdecilla y Córdoba, the same was not based upon any illegal transaction or consideration, but that the said mortgage by this defendant to the said firm of
32 Duran y Coll, being, as aforesaid, a valid and subsisting obligation for a valuable consideration, the said firm of Duran y Coll had lawful right to assign and transfer the same to the said Raimundo Valdecillo y Córdoba at their pleasure and that the said transaction was not feigned and simulated in so far as this defendant is informed and believes and that the lien of the said Raimundo Valdecillo y Córdova, should not be subrogated to any pretended lien claimed by the complainants herein.

This defendant further says that it is not true that the said firm of J. Tornabells and Company at any time made or attempt- to make any simulated or fraudulent conveyance or transfer of their said mercantile business to this defendant, but that it is true that on or about the 1st day of May, 1900, said J. Tornabells and Company transferred and conveyed to this defendant said mercantile business at that time belonging to them for a good and valuable consideration, to wit, the sum of $14,189.87 U. S. currency, which sum was stipulated by this defendant at that time to be paid to the said J. Tornabells and Company in four equal payments, and that the total amount of said purchase price has since been paid by this defendant to said J. Tornabells and Company in full; that said business has, since said transfer, been carried on and conducted by and in the name of this defendant and for his sole use and benefit and that it is not true the said J. Tornabells and Company, or either of said firm, have continued to be and now are in the active control and management of said commercial business or of the said twenty-six

parcels of real estate or any part thereof. Defendant says that it is not true that this defendant was not in the Island of Porto Rico at the time of the transfer to him of the said property belonging to the said firm of J. Tornabells and Company, and that it is not
33 true that he was represented in the said transfers by the defendant Alfredo Saliva; but that it is true that this defendant was at that time and is still a resident of said Island of Porto Rico and was personally present at the execution of said instrument; it is true that this defendant has resided in Porto Rico for a long time before the transaction referred to and has been continuously in said Island of Porto Rico, except during such short periods as his business compelled him to be absent therefrom. This defendant further says that he is the legal owner and holder in fee of each and every one of the parcels of land described in said Exhibit A, attached to said bill of complaint, and that it is not true that he sold the same or any part thereof, upon a secret or other trust for the use and benefit of the firm of J. Tornabells and Company or any one else, and that it is not true that said mortgages so executed as aforesaid by him, were upon a like secret trust for the use and benefit of the said firm of J. Tornabells and Company, or any one else, except, as aforesaid, but that the same were executed for a good and valuable consideration and for the lawful purpose herein before set out and therein expressed.

This defendant further says that it is not true that the said conveyance of land, described in said exhibit A, or the said assignments by the defendant's firm of J. Tornabells and Company to this defendant, were in any sense fraudulent or simulated or executed for any pretended consideration or for the purpose of hindering, delaying or defrauding the complainants, or other creditors of said firm, but that the same were and are legal and *bona fide* transactions for a valuable consideration, as herein before set out.

This defendant further says that the said firm of J. Tornabells and Company are not deriving any income whatever
34 from the growth and sale of the yearly crops of the said twenty six parcels of land, or from any other source connected with said land, and that the total income from said land and from all sources is being derived by this defendant exclusively and that said income should not, in any manner, in equity or good conscience be sequestrated or applied to the payment of the judgments held by the complainants against J. Tornabells & Company, and that no reason exists why this honorable Court should appoint a receiver for the said income or for any part thereof, or attempt to apply any portion thereof to the payment of the said debts, or other debts which may be due by the said J. Tornabells & Company.

This defendant further says that he is solvent and financially responsible for any and all of the rents, profits and income to be derived from the said land and merchandise and for that further reason no necessity exists for the appointment of a receiver for the same.

Wherefore, this defendant, having fully answered, confessed, traversed and avoid- or denied all the matters in the said Bill of Com-

plaint material to be answered according to his best knowledge and belief, humbly prays this honorable Court to enter its judgment that these defendants be hence dismissed with their reasonable costs, and charges in this behalf wrongfully sustained and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

DEXTER & HORD,
Solicitors for Defendant, Luis Aran y Lanci.

ISLAND OF PORTO RICO,
City of San Juan:

I, Luis Aran y Lanci, one of the defendants in the fore-
35 going suit do solemnly swear that the allegations contained in the foregoing answer are true.

L. ARAN.

Subscribed and sworn to before me S. B. Palmer, a Notary Public in and for the city of San Juan, Porto Rico, this the 4th day of October, A. D. 1902.

[NOTARIAL SEAL.] SANTIAGO R. PALMER,
Notary Public.

Answer of Defendant Juan Coll y Soler.

(Filed October 6th, 1902.)

ALBERTO WILL ET AL.
vs.
JOAQUIN TORNABELLS ET AL.

This defendant now and at all times saving to himself any and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained and for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to answer, answering says:

That he specifically denied each and all of the allegations of the complainant's bill herein wherein the same concern or refer to him or to transactions by or with him and the said mercantile concern of Duran and Coll except as hereinafter set out specifically and further says:

That while it is true that the said Luis Duran y Lanci did as alleged in said bil- execute and deliver to said Duran and Coll (of which firm this defendant is and was at that time a partner) a mortgage of and to those five certain tracts of land numbered one to five, inclusive, set out and described in Exhibit A to said bill
36 attached, it is not true that said mortgage was so executed for any such unlawful and fraudulent purpose as therein set out and alleged and that the same was not and is not a feigned and simulated transaction to any extent, but to the contrary that it is true in

fact that at the time said mortgage was executed said defendants J. Tornabells and Company were lawfully indebted to said firm of Duran and Coll in the sum of twenty thousand (20,000) pesos provisional coin, theretofore advanced to them, the said Tornabells and Company, by said Duran and Coll; that at and before the time of the execution of said mortgage said Tornabells and Company being in financial straits said firm of Duran and Coll demanded security for said sum, and that said defendant Luis Aran y Lanci, being, as this defendant is informed and believes and so alleges, largely indebted to J. Tornabells and Company, did at the request of J. Tornabells and Company execute to said Duran and Coll the said mortgage to so secure them in the payment aforesaid, whereby the said Luis Aran y Lanci constituted himself and became the debtor of said Duran and Coll for said sum.

This defendant further alleges that while it is true that said Duran and Coll on or about the 25th June, 1900 (not 1901) as alleged in said bill) mortgaged or transferred their interest in said first named mortgage to said Raimundo Valdecillo y Córdova, it is not true that said second mortgage or assignment or transfer to said Valdecillo was in whole or in part or in any manner fraudulent, feigned or simulated or based upon any such fraud or fraudulent mortgage or for any such fraudulent purpose as alleged in complainant's bill, but that the same was and is a valid and *bona fide* transaction for a valuable consideration.

This defendant further says that since the execution of
37 the said mortgage to said Duran and Coll to wit: on or about September 1901 said mortgages were paid on account of the same the sum of ten thousand pesos, said sum having been paid to them, the said Duran and Coll, by said J. Tornabells and Company for account of said Luis Aran y Lanci and were credited to said last named defendant. That as to the balance of said sum of twenty thousand (20,000) pesos provincial money, the same is a valid and subsisting obligation by said defendant Aran of which the said Valdecillo holds the transfer or assignment as aforesaid.

This defendant further says: that said mortgage was executed by the said defendant Luis Aran y Lanci acting in his behalf and not by or through said defendant Alfredo Saliva and that the said mortgage was not executed upon any secret or other trust for the benefit of J. Tornabells and Company or any other person whomsoever except as in said mortgage expressly set out, but was and is a *bona fide* transaction for a good and valuable consideration as aforesaid and for the lawful purposes herein set out.

And this defendant denied any and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, there is any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and

humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

38 DEXTER AND HORD,
Solicitors for Defendant Juan Coll y Soler.

(Signed) JUAN COLL Y SOLER.

Answer of Defendant Alfredo Saliva.

(Filed October 6th, 1902.)

ALBERTO WILL ET AL.,
vs.
JOAQUIN TORNABELLS ET AL.

This defendant, now and at all times saving to himself any and all manner of benefit of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, and for answer thereto, or to so much thereof as he is advised it is material or necessary for him to answer, answering says:

That while it is true he was at the time of the execution of the said conveyance by J. Tornabells & Company to said Luis Aran y Lanci the agent and attorney in fact of the said last named defendant, and that he is still his agent and attorney in fact, it is not true that he represented the said Luis Aran y Lanci in the said conveyance to him by the said J. Tornabells & Company, nor in said transfer of the stock of merchandise nor in the execution by the said Luis Aran y Lanci of the said mortgage to the said defendant, Baudelio Duran y Cat, nor in the execution of the said mortgage by the said defendant, Luis Aran y Lanci, to the said firm of Duran y Coll, but, that it is true that in each and every one of the said transactions the said Luis Aran y Lanci represented himself in person. That it is not

39 true, as alleged in the said bill of complaint, that this defendant has the exclusive management and control of the business and property belonging to the said Luis Aran y Lanci, as set out in said bill of complaint, but that the same are managed and controlled by the said Aran y Lanci in person, and by this defendant acting under him in the care of the said twenty-six parcels of real estate purchased by said Aran y Lanci from the said J. Tornabells & Company. That it is not true that said Luis Aran y Lanci, or this defendant, hold any part of said real estate or said stock of merchandise upon a secret trust for the use and benefit of the said firm of J. Tornabells & Company, but that the same belong to the said Luis Aran y Lanci and that the income therefrom is paid to him for his own exclusiveness and benefit; that in so far as this defendant knows and believes each and all of the said conveyances and mortgages set *you* and described in the said bill of complaint are legal and *bona fide* and were executed for valuable consideration, and are not part of any simulated or pretended or fraudulent plan to hinder, delay and defraud the complainants, or other creditors, of the said J. Tornabells & Company of their just and legal debts, Wherefore this defendant

having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint material to be answered according to his best knowledge and belief, humbly prays this honorable Court to enter its judgment that he be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief in the premises as to this honorable Court may seem meet and in accordance with law.

F. H. DEXTER,
Solicitor for Defendant Alfredo Saliva.

(Signed) ALFREDO SALIVA.

40 *Replication.*

(Filed October 22, 1904.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said several answers of Carlos Doitteau, A. Saliva and Juan Coll, for replication thereto say that they will aver and prove their said bill to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants; without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is untrue; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct, and humbly prays, as in and by his said bill he has already prayed.

HORTON & CORNWELL, AND
N. B. K. PETTINGILL,
Solicitors for Complainants.

41 *Petition of L. W. & P. Armstrong to be Made Party Complainant.*

(Filed October 31st, 1904.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

To the Honorable Judge of the Court aforesaid:

Your petitioners, L. W. Armstrong and P. Armstrong, residing and doing business in the State and city of New York, under the firm name of L. W. & P. Armstrong, respectfully represent:

That on the 23rd day of June, A. D. 1902, Alberto Will, doing

business in the city of Havana, Cuba, under the name of Will & Co.; Frederick Midgley, Alfred Midgley and Louis Midgley, residing and doing business in the city of Manchester, England, under the firm name of David Midgley & Sons; Guillermo Cortada, Ramón Cortada and Fernando Toro, residing and doing business in the city of Ponce, Porto Rico, under the firm name of Ramón Cortada & Company, as complainants filed their bill of complaint upon the equity side of this honorable Court against Joaquin Tornabells, Carlos Doitteau, residing and doing business in the city of Mayaguez, P. R., under the firm name of J. Tornabells & Company; Luis Arán y Lanci, Alfredo Saliva, Baudelio Durán y Cat; Juan Coll y Soler, as copartners under the firm name of Duran & Coll; and Raimundo Valdecilla y Córdova, all of said last named parties being defendants.

That in their said bill of complaint the said three complaining firms alleged that they had on the law side of this honorable
42 Court obtained judgments against the said firm of J. Tornabells & Company in the following respective amounts; to wit:

Will & Company	$12392.72
Midgley & Sons	4714.80
Ramón Cortada & Company	3431.77

and that execution had issued upon each of said judgments and had been returned *"nulla dona"* by the Marshal of this Court.

Your petitioners further represent that said complainants alleged that the said defendant firm of J. Tornabells & Company at the time of the creation of their said respective amounts of indebtedness were seized and possessed in fee simple of a large amount of valuable real estate which they afterward, to wit: in the year 1900 conveyed to their codefendant, Luis Arán y Lanci, by a conveyance fraudulent and without consideration for the purpose of hindering, delaying and defrauding their creditors; that thereafter the said defendant, Luis Arán y Lanci, executed and delivered to the defendant, Baudelio Duran y Cat, a mortgage upon a part of the real estate so fraudulently conveyed to him by the said J. Tornabells & Company, which said mortgage was also fraudulent and without consideration and executed in the further prosecution of said design to hinder, delay and defraud the creditors and said J. Tornabells & Company, and that by the same instrument, and with the same fraudulent intent, said Luis Arán y Lanci mortgaged another part of said real estate to the defendant firm, Durán & Coll; and, that in addition to the foregoing allegations, the bill of complaint so filed as aforesaid contained all the other necessary allegations and details necessary to charge all and every part of the real estate so conveyed by said defendant firm J. Tornabells & Company as aforesaid with the legal liability to respond to the burden of the judgments so recov-
43 ered as therein alleged and as against the said defendant firm of J. Tornabells & Company as the actual real owners thereof; and that said bill of complaint prayed that each and all of the conveyances of said real estate therein described, or any part thereof made by any of the defendants named in said bill of complaint

should be declared fraudulent and void as against the said creditors of said firm of J. Tornabells & Company, and that all and every part of the property in the said bill of complaint described might be adjudged to be, in equity and good conscience, the property of said defendant firm of J. Tornabells & Company, free from all liens and incumbrances so fraudulently placed upon it, as in said bill of complaint alleged, and that in default of the payments of the amounts found to be due to said creditors, the same might be sold under the decree of this honorable Court and the proceeds applied to the payment of said indebtedness.

Your petitioners further represent that process was duly issued against the defendants named in said suit and answers filed by them therein, to some of which replications have been made and to others exceptions are still pending, but that the issues have not yet been completely joined between the parties to said cause nor any further steps taken toward the disposition thereof.

Your petitioners further represent that on the 13th day of July, 1898, the defendant firm of J. Tornabells & Company was indebted to your petitioner in the just and true sum of ($8473.54), eight thousand four hundred and seventy-three dollars, fifty-four cents, for goods and merchandise previous to that date sold by your petitioners to the said defendant firm, J. Tornabells & Company; that by letter written by said firm of J. Tornabells & Company to your petitioners
on the 8th day of December, 1899, the said firm acknowl-
44 edged itself to be justly and truly indebted in the amount aforesaid to your petitioners (which letter, together with a true translation of the same into the English language is hereto attached marked Exhibit A); that no part of said amount has since been paid to your petitioners, either by the said firm of J. Tornabells & Company or by any one else in their behalf; and that the said defendant firm are now indebted to your petitioners in the said sum of $8473.54 together with interest at the legal rate from the said 13th day of July, 1898, until the same shall be paid.

Your petitioners further represent that the complainants in the bill of complaint now pending in this Court, as aforesaid, brought their said bill of complaint as a creditor's bill in behalf of themselves and all other creditors who might be entitled to join therein, and who will come in and contribute to the expenses of said suit.

Your petitioners represent that, as such creditors, they are entitled to join in said suit for the recovery of the indebtedness hereinbefore set forth, and that they hereby come before the Court by this, their petition, and offer to contribute to the expenses of said suit such share as may be equitable and just.

Wherefore, your petitioners pray that an order may be made by this honorable Court allowing them to join in said creditors' bill as joint complainants therein with the parties who originally brought the same, and to receive the same benefit and advantage of all orders and decrees made therein as the said original complainants, these petitioners hereby offering to abide by and obey on their part all such orders and decrees as may hereafter be made in said suit.

PETTINGILL & LEAKE,
Solicitors for Petitioners.

45 EXHIBIT "A."

(*Copy of Letter from J. Tornabells & Company to L. W. & P. Armstrong, Dec.* 8, 1899.)

(Translation.)

J. Tornabells & Co.

MAYAGUEZ, P. R. *December* 8, 1899.

Messrs. L. W. & P. Armstrong, New York.

GENTLEMEN: We have duly received your favor of the 14th ultimo, with copy of our account current to the 10th of November last which we have examined and find correct with the exception of the interest that you have charged us, as, in view of the basis of the agreement made here at a general meeting of our creditors, and which was accepted unanimously, we have ceased to pay interest since July 13th, 1898, the date of our suspension of payments.

Therefore, the balance in your favor, according to our books, is $8473.54, which we beg you will accept as correct.

Regarding the payment of this debt at the present time, we cannot make you any offer, as our situation is particularly critical. You are well aware of the disasters occasioned in the entire island by the late hurricane, which swept the country and the cities, and in consequence of which we suffered tremendous losses, as our property in the greater part was destroyed, and the crop of coffee on which we based all our hopes, especially as it promised to be a good one, may be said to have resulted in a complete loss. The little that has been gathered will scarcely cover the expense of gathering it. We also counted on being able to collect this year important amounts of debts due us, but as these were in the hands of agriculturists
46 of this district, who, as you know, have suffered so severely, and who have been left in a very precarious situation, we have not been able to get even a cent, and we are, therefore, without those resources on which we had counted to face our obligations.

We have related with sincerity the causes that have contributed much to our regret, to leave your account unpaid, and we beg you earnestly to take them into consideration and that you will be indulgent with us as other friends have been. It is not our desire to prejudice you in any way, and you can rest assured that we are doing all we can to comply with our obligations, but we need time to recover from the terrible loss that we have had, and the indulgence of our creditors who, we hope, will not put difficulties in our way, but on the contrary will permit us to continue our business.

Hoping that you will grant us this favor, we remain,

Your obedient servants,

(Signed) J. TORNABELLS & COMPANY.

47 *Order Allowing Petition of L. W. & P. Armstrong.*

Journal Entry.

DECEMBER 12, 1904.

In Equity.

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

The petition of L. W. & P. Armstrong to be made parties complainant herein is now, by N. B. K. Pettingill, their solicitor, called up, and the same being considered and there being no objection thereto is allowed, and the bill of complaint is amended to that effect, and the defendants are given until January 15, 1905, to plead to said bill as amended.

48 *Bill of Revivor.*

(Filed June 12, 1905.)

ALBERTO WILL ET AL.
vs.
JOAQUÍN TORNABELLS ET AL.

Bill to Subject Assets, etc.

Alberto Will, Cortada & Company, the complainants named in the original bill of complaint herein and L. W. & P. Armstrong, who have since been allowed to join as complainants by order of this court, bring this their bill of revivor against Inocencia Quevedo, Gerardo Tornabells and Rosa Maria Tornabells, all subjects of the King of Spain residing in Porto Rico.

And thereupon your orators complain and say that on or about the 23rd day of June, A. D. 1902, your orators Alberto Will and Cortada & Company filed their bill in equity in this court against Joaquín Tornabells and the other defendants named therein, alleging that the firm of J. Tornabells & Company, of which the said Joaquín Tornabells was a member, had fraudulently conveyed certain real property in said bill of complaint to the defendant Luis Aran y Lanci, without consideration and for the purpose of delaying and defrauding his creditors, and especially the said complainants out of the payment of certain judgments in said bill described.

That thereafter, all the defendants except one Ramón Valedecilla having been duly served with process, they appeared by counsel and after certain other proceedings not necessary to specify herein filed their several answers to said bill of complaint, to which answer exceptions have been duly filed and sustained, but a replication
49 has not yet been filed on the part of complainants, as report of Master has not been confirmed.

That the said L. W. & P. Armstrong also filed their petition, alleging that the said firm of J. Tornabells & Company was also indebted to them in a large amount as set forth in their petition, and that the conveyances set forth in the original bill of complaint were also in fraud of their rights as creditors, and praying that they might be allowed to join as complainants in said suit, which prayer was granted by order of this court dated the 12th day of December, A. D. 1904.

That after the filing of the replication aforesaid, to wit: on the — day of —— A. D. 1905, the said defendant Joaquin Tornabells died intestate, leaving as his sole heirs at law his widow, Inocencia Quevedo, and two children, Gerardo Tornabells and Rosa María Tornabells, who are the defendants hereinbefore named.

Wherefore your orators pray that the said cause may be revived by the decree of this honorable court, and that it may proceed to a decree in their favor in accordance with the prayer of the original bill of complaint herein.

Your orators further pray that a writ or subpœna may issue in due form of law, directed to the aforesaid Inocencia Quevedo, Gerardo Tornabells and Rosa María Tornabells, as heirs at law of the said Joaquín Tornabells, deceased, requiring them to appear and show cause, if any they have, why this cause should not be revived against them; and if no cause shall be shown by said defendants why said suit should not be revived, that a decree be entered reviving said suit in favor of your orators.

And your orators will ever pray, etc.

F. L. CORNWELL.
N. B. K. PETTINGILL.
Solicitors for Complainants.

50 *Answer of Heirs of Tornabells.*

(Filed October 2, 1905.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS ET AL.

To the Hon. Charles F. McKenna, Judge of the District Court of the United States for Porto Rico.

Come now Inocencia Quevedo, widow of Joaquín Tornabells, deceased, and his two children Gerardo Tornabells and Rosa María Tornabells, by their mother and next friend Inocencia Quevedo, and respectfully represent to this court, that heretofore they entered their appearance in this cause by their solicitor F. H. Dexter, and they now herewith pray that the answer of J. Tornabells & Co. and of Luis Arán, defendants herein, be adopted and considered as their answer respectively herein to all intents and purposes as if similar answers had been filed by them, and they hereby adopt as their own all the acts, pleadings and proceedings in this case of the said J.

Tornabells & Company and of the said Luis Arán, praying for the benefits of such decree or orders as may be rendered in favor of the said J. Tornabells & Co., and Luis Aran.

They further represent that Gerardo Tornabells and Rosa María Tornabells, above named, children of Joaquín Tornabells, deceased, are minors, that a guardian *ad litem* be appointed for them and in their behalf, and pray that the court appoint Don José Menendez of Mayaguez as such guardian *ad litem*.

51 San Juan, Porto Rico, October 2nd, 1905.

F. H. DEXTER, *Solicitor.*

Suggestion of the Death of Defendant Luis Aran, and Appearance of His Widow Francisca Aran, Administratrix of His Estate.

(Filed August 6, 1906.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS ET AL.

Now on this 6th, day of August 1906, F. H. Dexter, Solicitor, for defendants herein, suggests the death of defendant Luis Aran, which occurred on the 29th day of November, 1905, and that there has been appointed by the District Court of Mayaguez, his widow Francisca Aran, administratrix of his estate.

The said F. H. Dexter, solicitor, enters the appearance herein of the said administratrix Francisca Aran, who is made a party defendant in place of defendant Luis Aran.

And by agreement with solicitors for complainants, the widow and heirs of Don Joaquín Tornabells and the said administratrix of the estate of Don Luis Arán, are hereby allowed until the September Rule Day to file their amended answer as their solicitor may deem proper, in view of the sustaining of certain exceptions of complainants to the answer of the said Tornabells and Company and of the said Luis Arán.

B. S. RODEY, *Judge.*

52 *Amended Answer of Francisca Aran, Administratrix of Luis Aran, Deceased.*

(Filed September 4, 1906)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & COMPANY ET AL.

This defendant, now and at all times saving to herself any and all manner of benefit of exception or otherwise that can, or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, and for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for her to answer, answering says:

In accordance with the order of this court heretofore made and entered, sustaining certain exceptions presented by complainants herein to the answer of defendant Luis Aran, this defendant Francisca Aran, administratrix of the estate of the said Luis Aran, recently deceased, and in accordance with various stipulations heretofore made between the parties hereto, presents this her amended answer to the bill of complaint herein.

That it is not true that the said J. Tornabells & Company executed and delivered to the said Luis Aran any conveyance to the said twenty-six parcels of land, set out and described in said Exhibit "A" attached to said bill, for a pretended consideration of 197,700 pesos, provincial coin, as alleged in said bill, but that it is true that the said conveyance by the said J. Tornabells & Company was, and is, a legal and *bona fide* conveyance for the said twenty-six parcels of land for a valuable consideration, to wit: the said sum of
53 197,700 pesos, provincial coin.

This defendant says that it is not true that the said Luis Arán pretended to pay the said J. Tornabells & Company the said sum of 30,000 pesos, provincial money, on account of the said purchase of the said land; but the fact is that the said Luis Aran did pay the said sum of 30,000 pesos, provincial money, in the time and manner set forth in the original answer hereto.

Defendant further says that the said Luis Aran thereafter paid and discharged the balance of the foregoing indebtedness in the manner and form, to wit: $17,156.92 on June 29, 1901, which said amount was upon said date credited by J. Tornabells & Company to the said Luis Aran for and on account of money before that time furnished at various times and amounts, by the said Aran to J. Tornabells & Company, as appear by the numerous items in the account of the said Luis Aran with J. Tornabells & Company.

At the above date and after the said credit of $17,156.92, there remained a balance of $96,031.08 due by the said Luis Aran to J. Tornabells & Company, which was satisfied and discharged in the following manner, to wit:

Discount of all the unpaid instalments due by the said Aran to J. Tornabells & Company for and on account of the sale of the twenty-six pieces of property described in the bill of complaint.....	$38,779.33
Account of additional amounts paid in cash by the said Aran to J. Tornabells & Company, from June 29, 1901, until September 13, 1901, which appear in detail in the books of the said Aran and of J. Tornabells & Company.....	$6,799.54
54 On the 13th day of December, 1901, there remained a balance due by the said Luis Aran to J. Tornabells & Company, on account of the purchase of the said properties, the sum of.....	$50,452.21
And upon said last named date, there was paid by the said Luis Aran to J. Tornabells & Company, the sum of	$45,639.40
in cash, leaving a balance upon said date, of.....	$4,812.81

which was satisfied and discharged by various sums paid by the said Luis Aran to J. Tornabells & Company, in liquidation, from September 26, 1901, until April 1, 1902, as appears by the detailed accounts kept by the said Luis Aran with J. Tornabells & Company and the detailed accounts of Luis Aran kept by J. Tornabells & Company.

This defendant further says that the aforesaid twenty-six parcels of real estate did not exceed in value the said sum stipulated to be paid therefor, including the interest on the deferred payments, but that the same was at that time a reasonable and fair valuation of said real estate, and of each and every parcel thereof. Defendant says that it is not true that said real estate at this time greatly exceeds in value the sum of $100,000.00 United States currency; that the reasonable and fair value of said real estate at the time of said transaction was the sum of 150,000.00 pesos, provincial money, and that the difference between that sum and the stipulated price was intended by the parties to said transaction to represent the reasonable increase of said sum during the time for which the payments, as aforesaid, were deferred; that the reasonable value of said real estate at this time is less than said sum of 150,000.00, provincial currency,
55 and will not exceed the sum of 100,000 pesos, provincial currency. This defendant further says that the instrument executed by the said J. Tornabells & Company to the said Luis Aran, on or about the 26th day of September, 1901, wherein the said J. Tornabells & Company acknowledged to have received from the said Luis Aran the balance of 167,700 pesos, provincial money, was not executed for a pretended consideration, as alleged in said bill, but was, and is, a legal and binding receipt as set out, for a good and valuable consideration, to wit, the balance due to the said J. Tornabells & Company by the said Luis Aran, as aforesaid.

This defendant further says, that at no time has the said Luis Aran executed to the defendant, Baudilio Duran y Cat, or to the firm of Duran y Coll, any pretended mortgage to secure any sum. Defendant says that the mortgage executed by the said Luis Aran, on the 11th day of May, 1900, to Baudilio Duran y Cat, on fourteen of the twenty-six parcels of land described in the bill of complaint, was executed by the said Luis Aran in favor of the said Duran to secure the latter for the sum of 130,000 pesos, provincial money, which the said Duran loaned to the said Luis Aran, as appears by a certified copy of the said mortgage, together with a translation, hereto attached and marked "Exhibit A" to this answer.

This defendant further states that it is true that the said Luis Aran executed to the said defendant firm of Duran y Coll a mortgage on the five parcels of land, set out and described as numbers 1 to 5 inclusive, in said Exhibit "A" attached to said bill, to secure an indebtedness of 20,000 pesos, provincial money, with interest at the rate of nine per cent. per annum, which said 20,000 pesos were in reality a debt due by said J. Tornabells and Carlos Doit-
56 teau to said firm of Duran y Coll, and to secure the payment of which, the said Aran, at the instance of the said J. Tornabells and Carlos Doitteau, and as a matter of accommodation to them, he being at that time largely indebted to said firm, and said

fact was taken into consideration by them and the said Aran at that time, executed said mortgage to said Duran y Coll with the understanding and assurance on the part of the said J. Tornabells and Carlos Doitteau that they would pay off and discharge the said 20,000 pesos, provincial currency, and the interest as aforesaid, as the same should become due; that the said J. Tornabells and Carlos Doitteau have heretofore paid to the said firm of Duran y Coll the sum of 10,000 pesos, provincial currency, and this defendant is informed and believes and so alleges, that they still owe the balance of said sum.

This defendant says that by reason of the foregoing allegations, the estate of the said Luis Aran is surety for the said J. Tornabells and Carlos Doitteau for the payment by them to the said firm of Duran y Coll of the balance due on the said sum of 20,000 pesos, and interest, as aforesaid. This defendant says that the foregoing transaction was not and is not in any sense a pretended one, but that it is, and was, a *bona fide* transaction for the consideration aforesaid. This defendant further says that it is not true that any or all of the foregoing transfers, conveyances and mortgages are not legitimate and *bona fide* transactions, or were simulated, feigned or fraudulent, but that, in truth and in fact, each and every one of them was legal and a *bona fide* transaction for a good and valuable consideration, as therein respectively set forth, and that it was not true that any or all of them were executed for a fraudulent purpose or plan of hindering or delaying the complainants herein, or the other creditors
57 of the said firm of J. Tornabells & Company in the collection of their debts.

This defendant further says that, in so far as concerns the mortgage or assignment executed by the said firm of Duran y Coll to the said Raimundo Valdecillo y Córdoba, the same was not based upon any illegal transaction or consideration, but that the said mortgage by the said Luis Aran to the said firm of Duran y Coll, being, as aforesaid, a valid and subsisting obligation for a valuable consideration, the said firm of Duran y Coll had lawful right to assign and transfer the same to the said Raimundo Valdecillo y Córdoba at their pleasure, and that the said transaction was not feigned and simulated, in so far as this defendant is informed and believes, and that the lien of the said Raimundo Valdecillo y Córdoba should not be subrogated to any pretended lien claimed by the complainants herein.

This defendant further says that it is not true that the said firm of J. Tornabells & Company at any time made, or attempted to make, any simulated or fraudulent conveyance or transfer of their said mercantile business to the said Luis Aran, but that it is true, that on or about the 14th of July, 1900, said J. Tornabells & Company transferred and conveyed to the said Luis Aran said mercantile business at that time belonging to them, for a good and valuable consideration, to wit, the sum of $14,189.87, United States currency, which sum was stipulated by the said Luis Aran at that time to be paid to the said J. Tornabells & Company in four equal payments.

But defendant says that the said mercantile business of J. Torna-

bells & Company and the provisions and lumber owned by the latter were paid for by the said Aran in the following manner: The first two instalments thereof, amounting to $7,094.92, were paid
58 and discharged on the 29th of June, 1901, as part of the credit of $17,156.92 hereinabove referred to, and the other two instalments for the same amount were paid and discharged as a part of the operation of discount of the balance of $96,031.08 hereinabove referred to.

Defendant says that said business has, since said transfer, been carried on and conducted by and in the name of the said Luis Aran, and for his sole use and benefit, up to the time of his death, and that it is not true that the said J. Tornabells & Company, or either of said firm, have continued to be or now are in the active control and management of said commercial business or of the said twenty-six parcels of real estate, or any part thereof.

Defendant says that it is not true that the said Luis Aran was not in the Island of Porto Rico at the time of the transfer to him of the said property belonging to the said firm of J. Tornabells & Company, and that it is not true that he was represented in the said transfers by the defendant Alfredo Saliva; but that it is true that the said Luis Aran was at the time a resident of the said Island of Porto Rico and was personally present at the execution of said instrument; it is true that the said Luis Aran had resided in Porto Rico for a long time previous to the transaction referred to, and was continuously in said Island of Porto Rico up to the time of his death, except during such short periods as his business compelled him to be absent therefrom.

This defendant further says that the said Luis Aran was the legal owner and holder in fee of each and every one of the parcels of land described in said Exhibit "A" attached to said bill of complaint, and that it is not true that he sold the same or any part thereof, upon a secret or other trust, for the use and benefit of the firm of J.
59 Tornabells & Company or any one else, and that it is not true that said mortgages so executed, as aforesaid, by him, were upon a like secret trust for the use and benefit of the said firm of J. Tornabells & Company, or any one else, except as aforesaid, but that the same were executed for a good and valuable consideration, and for the lawful purpose hereinbefore set out and therein expressed.

This defendant further says that it is not true that the said conveyance of land, described in said Exhibit "A", or the said assignments by the defendant's firm of J. Tornabells & Company to the said Luis Aran, were in any sense fraudulent or simulated or executed for any pretended consideration, or for the purpose of hindering, delaying or defrauding the complainants, or other creditors of said firm, but that the same were, and are, legal and *bona fide* transactions for a valuable consideration, as hereinbefore set out.

This defendant further says that the said firm of J. Tornabells & Company is not deriving any income whatever from the growth and sale of the yearly crops on the said twenty-six parcels of land, or

from any other source connected with said land, and that the total income from said land from all sources, was derived by the said Luis Aran exclusively and that said income should not, in any manner, in equity or good conscience, be sequestrated or applied to the payment of the judgment held by the complainants against J. Tornabells & Company, and that no reason exists why this honorable court should appoint a receiver for the said income or for any part thereof, or attempt to apply any portion thereof to the payment of the said debts, or other debts which may be due by the said J. Tornabells & Company.

Defendant further alleges that the judgment of complain-
60 ant Alberto Will was not obtained until April 22, 1902; that of complainants Midgley & Sons, April 22, 1902; and that of complainants Cortada & Company, January 21, 1902; and the transfer by J. Tornabells & Company of the properties above referred to, to the said Luis Aran did not take place until May 2, 1900.

Defendant further says that by the law of Porto Rico at the time when said judgments were rendered, they did not, nor have they since, constituted a lien or charge upon any of the said properties, nor any other property of the defendants J. Tornabells & Company.

Defendant further says that as to complainant Armstrong & Company, they have not obtained any judgment at law up to this time.

Wherefore this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this honorable court to enter its judgment that these defendants be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief in the premises, as to this honorable court may seem meet and in accordance with equity.

FRANCIS H. DEXTER,
Solicitor for Francisca Aran.

61 *Amended Answer of Inocencia Quevedo, Widow of Joaquin Tornabells, Deceased, and of Carlos Doitteau, the said Joaquin Tornabells, and Carlos Doitteau, Formerly Composing the Firm of Joaquin Tornabells & Company, Original Defendants herein.*

(Filed September 5, 1906.)

ALBERTO WILL ET AL.,
vs.
J. TORNABELLS & COMPANY ET AL.

Amended Answer of Inocencia Quevedo, etc.

These defendants, now and at all times saving to themselves any and all manner of benefit of exception or otherwise that can, or may be taken to the many errors, uncertainties, and imperfections in the

said bill contained, and for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

In accordance with the order of this Court heretofore made and entered, sustaining certain exceptions presented by complainants herein to the answer of defendants J. Tornabells and Carlos Doitteau, composing the firm of J. Tornabells & Company, these defendants Inocencia Quevedo, administratrix of the estate of the said J. Tornabells, deceased, and Carlos Doitteau, and in accordance with various stipulations heretofore made between the parties hereto, present this their amended answer to the bill of complaint herein.

That while it is true, as alleged in complainant's bill, that said Company was indebted to the complainants in the respective sums sued out in said bill, and while it is true, as alleged in said bill, that complainants recovered judgment against said defendant
62 Company, as alleged, it is not true that said Tornabells & Company have at any time executed any conveyance, assignment or other instrument to Luis Aran y Lanci for the purpose of hindering or defrauding said complainants or other creditors of said firm of Tornabells & Company.

These defendants say that, while it is true that said firm of Tornabells & Company, did, as alleged in said bill, execute and deliver a conveyance to said Luis Aran y Lanci to the twenty-six parcels of real estate situated as described in the exhibit attached to said bill, that said conveyance was not for a pretended consideration, but that it was, and is, a *bona fide* transaction and for a good and valuable consideration of 197,700 pesos, provincial money; but the fact is that the said Luis Aran did pay the said sum of 30,000 pesos, provincial money, in the time and manner set forth in the original answer hereto.

Defendant- further say that the said Luis Aran thereafter paid and discharged the balance of the foregoing indebtedness in the manner and form, to wit: $17,156.92 on June 29, 1901, which said amount was upon said date credited by J. Tornabells & Company to the said Luis Aran for and on account of money before that time furnished at various times and amounts, by the said Aran to J. Tornabells & Company, as appear by the numerous items in the account of the said Luis Aran with J. Tornabells & Company.

At the above date and after the said credit of $17,156.92, there remained a balance of $96,031.08 due by the said Luis Aran to J. Tornabells & Company, which was satisfied and discharged in the following manner, to wit:

Discount of all the unpaid instalments due by the said Aran to J. Tornabells & Company for and on account of the sale of the twenty-six pieces of property described in the bill of complaint..... $38,779.33

63 Account of additional amounts paid in cash by the said Aran to J. Tornabells & Company, from June 29, 1901, until September 13, 1901, which appear in detail in the books of the said Aran and of J. Tornabells & Company..... $6,799.54

On the 13th day of December, 1901, there remained a balance due by the said Luis Aran to J. Tornabells & Company, on account of the purchase of the said properties, the sum of..... $50,452.21

And upon said last named date, there was paid by the said Luis Aran to J. Tornabells & Company, the sum of $45,639.40

in cash, leaving a balance upon said date, of..... $4,812.81

which was satisfied and discharged by various sums paid by the said Luis Aran to J. Tornabells & Company, in liquidation, from September 26, 1901, until April 1, 1902, as appears by the detailed accounts kept by the said Luis Aran with J. Tornabells & Company and the detailed accounts of Luis Aran kept by J. Tornabells & Company.

Defendants further say that the instrument executed by J. Tornabells & Company on September 13, 1901, in which they acknowledged the payment by the said Luis Aran y Lanci, as set out in said bill, was so executed in accordance with and because of the foregoing payment by the said Aran, and was, and is, a valid and lawful receipt for money received as aforesaid, and was not and is not, in any sense a pretended or fraudulent transaction.

Defendants further say that the mortgage executed by the said Luis Aran y Lanci to the said Baudilio Duran y Cat upon the said fourteen tracts of real estate, was not given for the purpose

64 of securing a pretended indebtedness of any amount, but was, and is, a valid and lawful transaction between the said parties, and was not, and is not, any part of any feigned or pretended or fraudulent transaction, as in said bill alleged.

These defendants further say that the mortgage executed by the said Luis Aran y Lanci to the firm of Durán y Coll on five of the said tracts of real estate, as set out in the said bill, was not given for the purpose of securing a pretended indebtedness of any amount, but was, and is, a valid and lawful transaction between the parties thereto, and was not, and is not, any part of any feigned or pretended or fraudulent transaction, as in said bill alleged, and that the assignment by the said Duran y Coll to the said Raimundo Valdecilla y Córdova of the said indebtedness to secure the said Valdecilla y Córdova in the payment of $6,000.00, was, and is, a legal and valid and subsisting transaction between the parties thereto.

These defendants further say that it is not true that any of the transfers, conveyances, and mortgages executed by and between the

parties, as set out in the said bill, are not legitimate and *bona fide* transactions, and that it is not true that any or all of the said transactions were, or are, simulated, feigned, or fraudulent, but that the same were, each and every one of them, legal and for a good and valuable consideration, and were not executed as part of any fraudulent plan or purpose to hinder, delay or defraud the complainants or any other creditors of the said firm of Tornabells & Company in the collection of their respective debts; that the mortgage by the said Luis Aran y Lanci to the said Duran y Coll, was not, in whole or in part, a feigned and fraudulent one, as alleged by the complainants, and that the mortgage or assignment by the said firm of Duran y Coll to the said Raimundo Valdecilla y Córdova based thereon, is a valid transaction, and that no such fraud ex-
65 isted in the said transaction, as alleged by the complainants, and that complainants should not be subrogated to any lien on the said property.

These defendants further say that while it is true that the said firm of J. Tornabells & Company was engaged in mercantile business in the said city of Mayaguez, as set out in said bill of complaint, and that on or about the first day of May, 1900, said defendant firm of J. Tornabells & Company transferred their said business to said defendant Luis Aran y Lanci, it is also true that said mercantile business has since been, and still is, being carried on in the name of said last named defendant, but that it is not true that the said defendants, J. Tornabells and Carlos Doitteau have since the date of their said transfer to said Luis Aran y Lanci, nor that the said Carlos Doitteau since the death of J. Tornabells has, remained in active control and management of said commercial business; that it is true that said commercial business has been since the day of the said transfer exclusively managed and controlled by the said Aran y Lanci and his agents under him, but not in any sense by either member of the said firm of J. Tornabells & Company. Defendants say that it is not true that either said Joaquin Tornabells, up to the time of his death, or Carlos Doitteau, has continued to manage or control any or all of the said twenty-six parcels of real estate described in the said Exhibit A, attached to said bill but that the same have been since the day of the said conveyance to the said Luis Aran y Lanci, in his exclusive management and control and that of his agents under him; and that it is not true that the said Aran was not in the Island of Porto Rico at the time of the transfer to him of said real and personal property, as set out in said bill, and it is not true that said Aran was represented in the said transaction by the said defendant Alfredo Saliva, but that it is true that
66 the said Luis Aran y Lanci was a resident of the Island of Porto Rico at the time of the said transaction and took part therein personally, and that he, the said Luis Aran y Lanci, had been long before that time, and still was, up to the time of his death, a resident of said Island of Porto Rico, and was continuously in said Island up to the time of his death, except during such times as he was absent therefrom for short periods, and that he is, and has been,

as aforesaid, in the actual management and control of said business and property.

Defendants say that it is not true that said Luis Aran y Lanci holds the legal title to all or any of the property described in said Exhibit A, upon a secret or other trust for the use and benefit of the said firm of J. Tornabells & Company, but that the said Luis Aran y Lanci is the legal owner and holder in fee of all of said property, and has so held it since the same was conveyed to him, as aforesaid, up to the time of his death; that it is not true that any of the mortgages executed by him for the purpose of any secret trust for the use and benefit of the said defendant firm of J. Tornabells & Company, or any other person whomsoever, or for the unlawful and fraudulent purpose alleged in said bill, but, to the contrary, said mortgages were, as aforesaid, legal and *bona fide* transactions for value between the said Luis Aran y Lanci and the said Baudilio Duran y Cat and the said firm of Duran y Coll, for the use and benefit of the parties thereto.

These defendants further say that, while it is true that they were largely indebted and in suspension of payments at the time of the execution of said conveyances and transfers to said Aran, as set out in said bill, that it is not true that said firm of J. Tornabells & Company was insolvent; that it is not true, as aforesaid, that any or all of said conveyances, assignments, transfers and mortgages
67 were fraudulently made for any simulated or pretended consideration, or for the purpose of hindering, delaying and defrauding the creditors of said J. Tornabells & Company, of their just and lawful debts, but that each and every one of said transactions were, and are, as aforesaid, legal and *bona fide* transactions for the consideration and purposes therein set out.

These defendants further say that it is not true that the said J. Tornabells and Company are deriving any yearly, or other income from the growth and sale of the crops from the aforesaid twenty-six parcels of land, or from any part thereof, and that it is not true that the said J. Tornabells & Company derived or received any benefit from said twenty-six parcels of land since the time of their sale to said Luis Aran y Lanci, except the payment of the purchase price thereof, as aforesaid, but that it is true that if any such income is derived from the said land, it belongs to and is derived and paid to the said Luis Aran y Lanci for his own use and benefit, or that of his estate since his death, and that it should not be in equity or in good conscience sequestrated or applied to the liquidation of the judgment held by the complainants against said firm of Tornabells & Company.

These defendants further say that the said 197.700 pesos, provincial money, was the fair and reasonable value of said twenty-six parcels of land at the time of said sale to said Luis Aran y Lanci, on the terms the same was consummated, and that the said land is not now reasonably worth the said sum.

Defendants further allege that the judgment of complainant Alberto Will was not obtained until April 22, 1902; that of complainants Midgley & Sons, April 22, 1902; and that of complainants

Cortada & Company, January 21, 1902; and the transfer by
68 J. Tornabells & Company of the properties above referred to, to the said Luis Aran did not take place until May 2, 1900.

Defendants further say that by the law of Porto Rico at the time when said judgments were rendered, they did not, nor have they since, constituted a lien or charge upon any of the said properties, nor any other property of the defendants J. Tornabells & Company.

Defendants further say that, as to complainant Armstrong & Company, they have not obtained any judgment at law up to this time.

Wherefore these defendants, having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to their best knowledge and belief, humbly prays this honorable court to enter its judgment that these defenda-ts be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief in the premises, as to this honorable Court may seem meet and in accordance with equity.

F. H. DEXTER.

69 *Bill of Revivor as to Heirs of Carlos Doitteau.*

(Filed January 24, 1907.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS ET AL.

Bill of Revivor.

Now come the complainants herein by their attorneys N. B. K. Pettingill and Horton & Cornwell and represent unto this Honorable Court that Carlos Doitteau, one of the defendants herein, died in the Municipality of Mayaguez, Island of Porto Rico, on the 22nd day of January, A. D. 1907, and that the heirs of said Carlos Doitteau, deceased, are the following: His widow Agustina Guffain, and his children, Celina, Guillermina and Carlos Doitteau, said children all being minors over the age of 14 years, and that the said heirs at law are all residents of Mayaguez, P. R.

Wherefore your orators pray that said suit may be revived against the said above named heirs of Carlos Doitteau, deceased, and that a subpœna in Chancery may issue directed to them and each of them requiring them to severally appear and make defense to the allegations of your orators' said Bill of Complaint, in accordance with the rules of Equity of this Court, and that your Honor may appoint a guardian *ad litem* for the above named minors' heirs and make such other and further order*a* in the premises as may be agreeable to equity.

N. B. K. PETTINGILL,
HORTON & CORNWELL.

70 *Petition of Defendant Francisca Aran, Administrator of the Estate of Luis Aran, Deceased, for the Amendment of Her Answer Heretofore Filed.*

(Filed January 29, 1907.)

ALBERTO WILL & CO. ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Defendant, Francisca Aran, Administratrix of the Estate of Luis Aran, deceased, respectfully prays of the Court permission to amend her amended Answer heretofore filed in the following respects, to wit:

By striking out all of the second paragraph of the 1st page of her Amended Answer filed in this cause on the 4th day of December, 1906, which paragraph begins with the words "In accordance with the order of this Court," and ends with the words, "presents this, her Amended answer to the Bill of Complaint herein," and to substitute the following:

Complainants herein are not entitled to the rescission of the deeds and transfers described in the Bill of Complaint herein, for the reason that no action has been brought for that purpose within one year from the date thereof, as required and provided by Article 37 of the Mortgage Law in force in Porto Rico.

Defendant says that as to the claim and judgment of Complainant Alberto Will & Co. against J. Tornabells & Co. it was based upon certain accommodation drafts of Schulze & Co., endorsed by the said J. Tornabells & Co. to the said Complainant, which said drafts were drawn in the month of April, 1898. The de-

71 fendant says that the said firm of Schulze & Co. was the principal payor of the said drafts, and that in the month of May, 1900, at the time of the transfer from J. Tornabells & Co. to Luis Aran, described in the Bill of Complaint herein, no liability of the said J. Tornabells & Co. had been determined thereon by any suit or judgment against either said firm of Schulze & Co. or J. Tornabells & Co., and no action of any kind had been brought by the said complainant for the recovery of the amounts of the said drafts, except the action against the said J. Tornabells & Co. described in the Bill of Complaint herein, upon which judgment was rendered in the month of April, 1902, some two years after the transfer complained of.

As to the claim of David Midgely & Sons, defendant says that the claim of said complainants against J. Tornabells & Co. was based upon a general indebtedness of £1,160 for merchandise sold by the said complainants to the said J. Tornabells & Co. on the 1st day of January, 1901, as appears by the complaint filed by said complainants, David Midgely & Sons, against J. Tornabells & Co., upon the Law side of this Court, as described in the Bill of Complain*ant* herein, and in which judgment was rendered against the said J.

Tornabells & Co. in the month of April, 1902, some two years after the transfer from the said J. Tornabells & Company to Luis Aran, complained of.

As to the claim of Ramón Cortada & Co., defendant says that it was based upon a general indebtedness of $3,480 on the 4th day of August, 1900, for goods and merchandise sold by the said complainants, Ramón Cortada & Co., to the said J. Tornabells & Co., and defendant says that no judgment was obtained by the said Ramón Cortada & Co. against J. Tornabells & Co., on account thereof,
72 until the 21st day of January, 1902, more than one year and a half after the transfer by J. Tornabells & Company to Luis Aran, complained of in said Bill of Complaint.

As to the claim of L. W. & P. Armstrong, defendant says that no judgment has ever been obtained by them on account thereof against J. Tornabells & Co., and that the same is a general indebtedness only, for goods and merchandise sold amounting to $8,473.54, as recognized by the said J. Tornabells & Co. on the 8th of December, 1899. But the said L. W. & P. Armstrong at no time had acquired a lien upon any of the property of the said J. Tornabells & Co. to secure the same.

Defendant says that during the lifetime of her husband, Luis Aran, he did not discuss his affairs with her, and she has only since the death of her said husband been able to acquire information concerning the various transactions above referred to.

Defendant says that the foregoing amendments are in the interest of justice, and that as they are true in fact, she prays that this Court will permit the same, in order that this case may be fully and properly heard upon the merits.

FRANCIS H. DEXTER,
Solicitor for Francisca Aran, Administratrix of the Estate of Luis Aran, Deceased.

Francisca Aran, being duly sworn upon her oath, says that she is the widow of Luis Aran, and Administratrix of his Estate; and that the foregoing facts are true.

FRANCISCA ARAN.

Subscribed and sworn to before me this 26 day of January, 1907
[NOTARIAL SEAL.] MARIANO RIERA PALMER,
Notary Public.

73 *Order Authorizing an Amendment of the Answer of Francisca Aran, Administratrix of the Estate of Luis Aran, Deceased.*

(Filed February 2, 1907.)

ALBERTO WILL & CO. ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Now, on this 2nd day of February, 1907, defendant Francisca Aran, Administratrix of the Estate of Luis Aran, deceased, by her Solicitor, Francis H. Dexter, presents to the Court her petition, asking leave to amend her Amended Answer heretofore filed.

Complainants appear by their Solicitors, N. B. K. Pettingill and Horton & Cornwell.

Upon the consideration of the said Petition, and in furtherance of justice, it is hereby ordered that defendant may amend her Amended Answer heretofore filed, in the following respects, to wit:

By striking out all of the second paragraph of the 1st page of her Amended Answer filed in this cause on the 4th day of December, 1906, which paragraph begins with the words, "In accordance with the order of this Court," and ends with the words, "presents this, her Amended Answer to the Bill of Complaint herein," and to substitute the following:

Complainants herein are not entitled to the rescission of the deeds and transfers described in the Bill of Complaint herein, for the reason that no action has been brought for that purpose within one year from the date thereof, as required and provided by Article 37 of the Mortgage Law in force in Porto Rico.

74 Defendant says that as to the claim and judgment of Complainant Alberto Will & Co. against J. Tornabells & Co., it was based upon certain accommodation drafts of Schulze & Co., endorsed by the said J. Tornabells & Co. to the said Complainant, which said drafts were drawn in the month of April, 1898. The defendant says that the said firm of Schulze & Co. was the principal payor of the said drafts, and that in the month of May, 1900, at the time of the transfer from J. Tornabells & Co. to Luis Aran, described in the Bill of Complaint herein, no liability of the said J. Tornabells & Co. had been determined thereon by any suit or judgment against either the said firm of Schulze & Co. or J. Tornabells & Co., and no action of any kind had been brought by the said complainant for the recovery of the amounts of the said drafts, except the action against the said J. Tornabells & Co. described in the Bill of Complaint herein, upon which judgment was rendered in the month of April, 1902, some two years after the transfer complained of.

As to the claim of David Midgley & Sons, defendant says that the claim of said complainants against J. Tornabells & Co. was based upon a general indebtedness of £1160 for merchandise sold by the said Complainants to the said J. Tornabells & Co. on the 1st day of

January, 1901, as appears by the complaint filed by said complainants, David Midgley & Sons, against J. Tornabells & Co., upon the Law side of this Court, as described in the Bill of Complaint herein, and in which judgment was rendered against the said J. Tornabells & Co. in the month of April, 1902, some two years after the transfer from the said J. Tornabells & Company to Luis Aran, complained of.

As to the claim of Ramón Cortada & Co. defendant says
75 that it was based upon a general indebtedness of $3,480 on the 4th day of August, for goods and merchandise sold by the said complainants, Ramón Cortada & Co., to the said J. Tornabells & Co., and defendant says that no judgment was obtained by the said Ramón Cortada & Co. against J. Tornabells & Co., on account thereof, until the 21st day of January, 1902, more than one year and a half after the transfer by J. Tornabells & Company to Luis Aran, complained of in the said Bill of Complaint.

As to the said claim of L. W. & P. Armstrong, defendant says that no judgment has ever been obtained by them on account thereof against J. Tornabells & Co. and that the same is a general indebtedness only, for goods and merchandise sold, amounting to $8,473.54, as recognized by the said J. Tornabells & Co. on the 8th of December, 1899. But the said L. W. & P. Armstrong at no time had acquired a lien upon any of the property of the said J. Tornabells & Co. to secure the same.

It is further ordered that the general replication of complainants heretofore filed, shall be held to extend to this answer as amended.

San Juan, Porto Rico, February 2nd, 1907.

B. S. RODEY, *Judge.*

76 *Journal Entry, February* 11, 1907.

A. WILL AND COMPANY ET AL.
vs.
J. TORNABELLS & CO. ET AL.

And in appearing that Subpœna in Chancery duly issued from this Court returnable the first Monday in March, 1907, on Bill of Revivor herein filed on January 24th, 1907, as to heirs of Carlos Doitteau, deceased, the Marshal's return thereon showing that service was properly made on all of said heirs, to wit: Agustina Guffain, widow of Carlos Doitteau, Celina Doitteau, Guillermina Doitteau and Carlos Doitteau, on the 24th day of January, 1907. Now, in open Court, in the presence of all the Attorneys interested, it appearing that the interests herein represented by F. H. Dexter, Esq., are in no way in conflict with the interests of the minors of Carlos Doitteau, deceased, the said Francis H. Dexter, Esq., is hereby appointed Guardian *ad litem* herein of Celina Doitteau, Guillermina Doitteau and Carlos Doittea-, minor children of Carlos Doitteau, deceased.

Journal Entry, February 12, 1907.

A. WILL AND COMPANY ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Resumed.

It appearing that Inocencia Quevedo, widow of Tornabells, and Gerado Tornabells and Rosa María Tornabells, minor children of Joaquin Tornabells, deceased, are not now represented herein, as F. H. Dexter, Esq., former counsel for them, has withdrawn as such heretofore, now, Salvador Mestre, appears as Solicitor for the said Inocencia Quevedo, widow of Joaquin Tornabells, deceased,
77 under her written authorization therefor, and he being also designated to appear for the said minor children of Joaquin Tornabells, and it appearing that no conflicting interests are at stake, the said Salvador Mestre, Esq., is hereby appointed Guardian *ad litem* for the said Gerado Tornabells and Rosa María Tornabells, minor children as aforesaid, of Joaquin Tornabells, deceased. The Clerk is instructed to ascertain whether any guardian *ad litem* has been appointed before this for the said minors of Joaquin Tornabells, and if so, to inform the Court, when previous appointment will be vacated.

Salvador Mestre, Esq., thereupon announces to the Court that he accepts the pleadings on file and if any change be required he will apply to the Court for leave so to do.

Answers to Intervening Petition of Ruffer & Sons and Caja de Ahorros de Mayaguez.

The amended answer of Francisca Aran, widow of Luis Aran, and Administratrix of the estate of Luis Aran, deceased, is hereby ordered, by consent of Counsel, to be considered as an answer to the Intervening Petition of Ruffer & Sons, Caja de Ahorros de Mayaguez.

And the American Trading Company, by its Solicitor, C. M. Boerman, reserves to itself the right to traverse and attack claim of intervening creditors, Ruffer & Sons, and Caja de Ahorros de Mayaguez.

Complainants' Motion to Dismiss as to Heirs of Duran.

Comes now, Messrs. Horton & Cornwell and N. B. K. Pettingill, Counsel for Complainants herein, and as to the children of Baudilio Duran, and other heirs, who have not been served with process herein, moves to dismiss this cause of action on the ground that they are not such indispensable parties to the suit as that the Court would of its own motion insist on their being brought into Court.

78 And thereupon comes C. M. Boerman, representing the American Trading Company, which has heretofore been made a defendant in the cause, and opposes the granting of the motion to so dismiss as to said parties on the ground that the ancestor of the said heirs, one Baudilio Duran, who was in his lifetime a party to this suit, is so connected with the suit, that of necessity his heirs must be, and are indispensable parties, and because the said Baudilio Duran, endorsed the note, of which the American Trading Company is now the holder and for which purpose it is in the cause, and the Court having heard Counsel for all the parties in the premises, and after due consideration thereof, grants the motion to dismiss on the ground that said heirs being out of the jurisdiction and having entirely disposed of their interest in the cause, are not indispensable parties thereto. To which ruling of the Court, Counsel for the American Trading Company excepts.

Journal Entry, February 13, 1907.

A. Will and Company et al.
vs.
J. Tornabells & Co. et al.

Hearing resumed.
All parties present.
Now comes F. H. Dexter, Esq., Solicitor for Francisca Aran, Widow of Luis Aran, deceased, and Administratrix of the estate of Luis Aran, deceased, and moves the Court to be allowed to file Substitute Order authorizing an amendment of the answer of said Francisca Aran, it appearing that the original order is missing and all parties consenting, said Substitute Order is now filed.

Amendment to the Answer of the American Trading Company.

79 Now comes C. M. Boerman, Esq., for the defendant American Trading Company, and with leave of Court first had, files and amendment to the Answer filed herein.

And thereupon, comes José de Diego, Esq., and Cayetano Coll y Cuchí, Solicitors for defendants El Banco de Soller, Fritze, Lundt & Co. Sucs., Fritze, Lundt & Co. in Liquidation, Carmen Rita Surriñach, Ricardo Surriñach, Camilo Surriñach, María Antonia Surriñach, Adolfo Ramirez de Arellani, y Lugo, Alfredo Ramirez de Arellano y Rossell, Quintin Ramirez y Ramirez and Pedro Aran y Cuascú, and by leave of the Court first had, file amendment to the several answers of the said defendants.

Journal Entry, February 14, 1907.

A. WILL AND COMPANY ET AL.
vs.
J. TORNABELLS & COMPANY ET AL.

Resumed.

The Court proceeds to hear further testimony for the Complainants, and the following named witnesses duly sworn, testify on their behalf, to wit: F. L. Cornwell, Angel Martinez, Emilio Gomez, Ramón Frontera and Camilo Surriñach.

Whereupon at the conclusion of the testimony of the foregoing named witnesses, Complainants rest their case.

And thereupon, F. H. Dexter, Esq., Willis Sweet, Esq., Cayetano Coll y Cuchi, José de Diego, and C. M. Boerman, Esq., on behalf of the defendants, respectively represented by them, moves the Court to dismiss the Bill of Complainants herein because of the failure of Complainants to prove the allegations of the same, or to make out a case sufficient to sustain the same.

The court proceeds to hear argument of Counsel in support of motion to dismiss.

80 *Journal Entry, February* 15, 1907.

A. WILL & COMPANY ET AL.
vs.
J. TORNABELLS & COMPANY ET AL.

Resumed.

Now comes Salvador Mestre, Esq., Solicitor for Inocencia Quevedo, widow of Joaquin Tornabells, deceased, and states to the Court, that his client accepts the answer heretofore filed by her herein, and the said answer is ordered to remain of record.

Argument in support of Motion to dismiss Bill of Complaint resumed and completed.

And now comes N. B. K. Pettingill, Esq., of counsel for Complainants and the Court hears his argument in opposition to the granting of said motion to dismiss.

Whereupon the Court overrules the said motion to dismiss Bill of Complaint herein, with a call for proofs, and Briefs to be filed by March 15th, 1907, to which ruling defendants except.

81 *Journal Entry, June 3rd,* 1907.

A. WILL & CO. ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Upon the reading of the record of the Court for the 15th day of February, 1907, touching the proceedings in the above cause, it ap-

pearing that said record is incomplete, it is hereby amended so that the last paragraph on page 344 of the present volume shall read as follows:

Whereupon the Court overrules said motion to dismiss the bill of complaint herein and calls upon the defendants to proceed with their proofs; and all the defendants, except the American Trading Company by their respective attorneys, announce that they do not desire to offer proofs in defense, but elect to rely upon their aforesaid motion to dismiss, and said American Trading Company by its attorney C. M. Boerman, thereupon proceeded to offer proof on its behalf which was received and heard by the Court. Whereupon said cause was submitted for final decision and all parties allowed until March 15th to file briefs.

82 *Opinion Finding and Holding that Complainants Have Not Made a Prima Facie Case, and Dismissing the Bill.*

First Citation in Porto Rico of Romeu *v.* Todd, 206 U. S. 358.

(Filed June 22, 1907.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO., ET AL.

This is a creditors' bill filed June 23, 1902, and permitted to remain on the docket of this court during the five years that have since intervened, without any apparent proper or sufficient cause for the unwarranted delay and with infinite inconvenience to many parties connected with the subject matter of the controversy. The first two years and a half of the time seem to have been taken up with a battle over the proceedings, trying to get the answers of the several respondents settled, and during which time complainants' exceptions to several of the answers were referred to a master, arguments had before him, his report filed, exceptions to the same presented, arguments had on the latter and briefs submitted in support thereof, and so on, in an interminable and fruitless contest of petitions, motions, exceptions, pleas, demurrers, orders, affidavits and rules to show cause, without result or real merit as we see it. The next year and a half seem to have been taken up somewhat in the same way and also partly in an application for a receivership and in opposing efforts to the same, and in efforts to prevent outside parties from foreclosing several mortgages they had on some of the premises involved, that they had secured in the meantime, in enjoining them from so proceeding and in issuing rules as for contempts against them for their action in that behalf, etc.

83 When the present incumbent came upon this bench, at a time when we were not acquainted with the exact status of this suit, an application was made for a receiver, and, as many of the principal parties were agreeable, it was granted,—others of the parties opposing. Then more time was taken up with suggesting

the several deaths of, and bringing in through bills of revivor, the representatives of the estates of every one of the original respondents. Still more time was occupied with answers, and in and about again enjoining some of the mortgagees and intervening purchasers from attempting to foreclose their alleged liens in the insular courts. Still more time was taken up by the filing of intervening petitions by some additional creditors and the raising of issues thereon. Quite recently, in the present year, and immediately before the hearing had as next hereafter referred to, Rufer & Sons, of New York, who had obtained a judgment in this Court on the 2nd day of May, 1903, for $13,414.84 and $41.00 costs, and the Caja de Ahorro de Mayaguez, which had recovered a judgment also in this court on the 3rd day of June, 1903, for $8,470.48 and $41.65 costs, both petitioned and were permitted to intervene as complainants herein, so that the sums claimed by all the complainants combined, amount, with costs, to a total of $51,129.03, a quite respectable sum, but, as it is said, quite small in comparison to the whole vast assets and liabilities of the house of Tornabells & Company.

Finally, in the spring of the present year 1907, the Court managed to force the parties to an issue, and a trial was had at Mayaguez before the Court itself, without the intervention of an examiner or master. Seven or eight able counsel appeared for the several parties, which, as stated, include additional complainants and new
84 respondents besides the numerous representatives aforesaid. At the hearing, complainants, dismissed as to the representatives of the original respondent Baudilio Duran, as he in fact never had been cited and his heirs were not to be found within the jurisdiction of the court and could not be served with process, it being stated that they or their ancestor had disposed of their entire interest in the proceeding, and it further being claimed that said Baudilio Duran had been a mere conduit of title and his heirs therefore were unnecessary parties. This point was stren-ously objected to and contested by all the counsel for respondents, particularly by counsel for the American Trading Company, but we think the contention of complainants is sustained by the law.

A hearing of two or three days was had, wherein complainants introduced several large exhibits, showing the transactions or some of them, upon which the bill was based; and also introduced several witnesses with a view to proving the allegations of the bill, most of which witnesses, as the Court clearly saw, proved somewhat adverse, and from whom scanty testimony was obtained, although counsel for complainants claim that sufficient was obtained, when considered in connection with the pleadings and exhibits, to entitle their clients to a decree. This contention is strenuously opposed by counsel for all respondents. It will be referred to hereafter.

At the end of the hearing the respondents moved that the bill be dismissed on the ground, among others, that on its face it showed no equity entitling complainants to a decree, and that neither did the so-called proofs adduced, show any; and further because it was claimed that the statute of limitations of one year with reference to conveyances in alleged fraud of creditors, contained in Art. 37 of

the local Mortgage Law, had run against the right to file
85 the bill in the first place; and further because as to all the respondents, and particularly as to the supplemental or new respondents, they were all, as claimed, innocent purchasers or lienors of the portions of the property they had acquired in good faith, for full value and without notice, because no warning or cautionary notice of the pendency of the suit had been filed in the registry of property, as it was claimed was required by law.

The court overruled this motion to dismiss and called upon the respondents for their proofs, but save as to a formal matter or two by some of them, they all declined to introduce any proofs, choosing to stand on the several grounds of their motion to dismiss. Whereupon the Court announced that its denial of their motion to dismiss was no indication that we were satisfied that a decree ought to be entered for complainants, but that we would fix a time within which all counsel might file briefs in that behalf. Within about sixty days after that time, elaborate briefs and written arguments, some of them forty or fifty pages long, were filed by nearly all the counsel. The stenographer's notes of the evidence have all been written out, the exhibits have been arranged, we have read all the testimony, the briefs and arguments and have examined the exhibits, besides many of the authorities to which we were referred. With our recollection thus refreshed, the matter is before us for final determination.

The original bill was filed, and counsel for complainants acted thereunder through all the years of the proceeding, on the theory that the ancient chancery rule of *lis pendens* obtains in this court in this Island, and therefore complainants did not at any time during the course of the proceeding, file in the registry of property any
86 cautionary or warning notice of the pendency of the suit as required by the local mortgage law, assuming that the old chancery rule said to obtain in the courts of the United States in the States, was sufficient in that regard to bind all the property described in the bill, and that all persons purchasing or taking liens upon any portion of the same after the filing of the bill, and the service of process under it, did so at their peril and subject to complainant's rights.

On May 27th, less than a month ago, the Supreme Court of the United States rendered its decision in the case of Higinio Romeu *v.* Robert H. Todd (to be printed in Vol. 206 U. S. Reports), which went up from this court some two years ago, and in and by such decision it is claimed, declared the chancery rule of *lis pendens* not to be in force in Porto Rico at all, because of the character of the court and the peculiar terms of the Foraker Law or Organic Act (31 Stats. 77). We will also have occasion to refer to this contention later on in this opinion.

From the bill as finally settled, and the several answers, as well as from the vast bundles of other pleadings that have crept into the case, and from the exhibits and the hearings had before us, we have in a measure learned the facts of the case, and as it will not be pos-

sible to intelligently consider or understand the issues involved without setting them forth, we state them to be substantially as follows:

For many years previous to the year 1900, Joaquin Tornabells and Carlos Doitteau had been doing an immense business as merchants, traders, coffee planters, and dealers, at the city of Mayaguez, on this Island, and to that end, possessed, and owned large stocks of goods and many buildings, warehouses, plantations, plants, machinery, etc. It developed in the cause that some years or so previous to that time, this firm being in embarrassed circumstances owing
87 to the devastating effects of the great hurricane of 1899, which impoverished so many coffee planters and merchants on the Island, under a local statute permitting such a proceeding, went into the courts and obtained a suspension of payments of their debts for a three year term, the same to be paid in instalments in some manner agreed upon at a meeting of their creditors, as was provided under that law. This fact in their circumstances was presumably well known in that community. While they were thus living under the protection of this suspension of payments, and on the 2nd day of May in the year A. D. 1900, the firm, by a duly executed public instrument, transferred what is contended was practically all of its property, although this fact as to its being anywhere near all the firm's property is not admitted by respondents,—on what evidence we do not know. Said property consisted of its place of business and other town property, its stock of merchandise and twenty-six several pieces of real estate, most of them being coffee plantations, and their appurtenances, to the respondent Luis Aran y Lanci for an alleged consideration of 197,700 pesos provincial money, 30,000 pesos of which was stated in the transfer to have been paid in cash at the time of the sale, and the balance to run in all for ten years, to be paid at the rate of 16,700 pesos provincial money per annum without interest. These twenty-six pieces of property are each particularly numbered and described in an extensive exhibit to the bill.

Nine days later, on May 11, 1900, this vendee, Luis Aran y Lanci, mortgaged fourteen of the twenty-six parcels of real estate, under proper description and number, to the respondent Baudilio Duran y Cat, as an individual, but who, as stated, never was served with process in this cause,—to secure unto him an alleged indebted-
88 ness of 130,000 pesos provincial money, with interest at the rate of six per cent. per annum thereon, Aran giving to his said vendee his ten negotiable promis-ory notes in that behalf, so secured, running from one to ten years respectively, for the sum of 13,000 pesos each; and in the same instrument also mortgaged to the said same respondent's firm of Duran & Coll, who were also a firm of merchants doing a large business at said Mayaguez, five additional parcels of said real estate, all also as numbered and described, to secure an alleged pre-existing indebtedness of 20,000 pesos provincial money, with interest from said date at the rate of nine per cent. per annum thereon. The said firm of Duran & Coll a month and a half thereafter, on the 25th day of June in the year 1900, re-mortgaged or assigned their said alleged mortgage interest to the respondent Rai-

mundo Valdecillo to secure an alleged indebtedness of theirs to him of 6,000 pesos provincial money. Every one of which transfers complainants allege were made without consideration of any kind with intent to hinder, delay and defraud complainants and other creditors of the said firm of J. Tornabells & Co., no consideration at all, as alleged, having passed between the respondent Luis Aran y Lanci and the respondent firm of J. Tornabells & Co. for the first transfer and none from the said respondent Baudilio Duran y Cat to the said Luis Aran y Lanci for the largest part of the second transfer, and none between the said firm of Duran & Coll and the said Aran for the second part of said second transfer, and that if any consideration passed between the said Valdecillo and the said firm of Duran & Coll for the said re-mortgaging, assignment or third partial transfer, it was with full notice of complainants' rights, and therefore unavailing as against them.

Complainants further allege that this whole transaction was a subterfuge and fraud and that in truth and in fact a secret
89 trust existed between the parties by which the property in reality remained with the respondents J. Tornabells & Co., and that they continued thereafter to collect the money from, use, enjoy and dispose of said property or its proceeds, just the same as before. This is strenuously denied by all respondents.

These transfers which are alleged to have been without consideration and in fraud of creditors, were filed in the proper public registry offices for the filing of titles to land, within a short time of the execution of each of the same respectively, that is to say, the one from J. Tornabells & Co. to respondent Luis Aran on the 31st day of August, 1900; the joint mortgage from Aran to respondents Baudilio Duran individually and Duran & Coll as a firm on the 16th day of May, 1900; and the reassignment from Duran & Coll to Valdecillo on the 5th day of July, 1900. As to whether or not the respondent Luis Aran y Lanci took immediate possession of the place of business and of these plantations on the execution of the deed from Tornabells & Co. to him, is disputed on the evidence, but the weight of it would seem to be that he did, even though it is probably true that Tornabells & Co. continued thereafter to remain around their old place of business, settling up their affairs, if not actually in regular business.

However, on the 13th day of September, 1901, one year and four months after the date of the main transfer, the respondent firm of J. Tornabells & Co. executed before a notary, a public instrument which was duly filed in the registry of property and is in evidence, by which they acknowledged complete payment to them by said Luis Aran y Lanci of the balance of 167,700 pesos provincial money due them, thus pretending at least to clear off the entire property to the respondent Aran y Lanci and necessarily making his mean-
90 time mortgage thereof to the other respondents Baudilio Duran y Cat and the latter's firm of Duran & Coll, presumably completely good, in so far as the registry of property would show.

It also transpires that none of these original complainants, or any other complainant who joined them thereafter, had at the time of the making of this original alleged fraudulent transfer, any judg-

ment against the said J. Tornabells & Co. and none of them recovered any such judgment for more than a year thereafter, and most of them much later, some as late as three years, and the said transfer thus originally made, was not in fact attacked by anyone for more than two years and one month after the making of the same, to wit, on *June 23, 1902*, when the original bill in this cause was filed, alleging these several frauds, and during which period no cautionary notice of any sort or kind was filed in the registry of property.

On the 18th day of June, 1902, the new respondent, the Banco de Soler, took a mortgage upon one of the properties mentioned in the original bill, that is called Porvenir, but did not get its said mortgage to the registry until the 5th day of July, 1902, which was a day or two after the service of process upon all of the original necessary respondents in the case, this firm strongly protests that it is an innocent lienor for value without notice. That it took its mortgage after a thorough search of the records and after having seen respondent Aran in unmolested possession of, and dealing with it for years, etc.

Also the new respondents Fritze, Lundt & Co. Sucesores, and Fritze, Lundt & Co. in liquidation, took a mortgage upon two of the estates concerned in this original bill, known as Paz and Atalaya, but they did not get the same of record until the 7th of January, 1903, some six and a half months after the filing of the bill. They in
91 like manner insist that they are innocent lienors for value without notice, and that because no cautionary notice under the mortgage law was on file, and Aran was for several years in peaceable possession of, and dealing with the property, having good recorded title thereto, complainants can have no cause of action against them.

The new or supplemental respondents M. Martinez & Co., Carmen Rita Surriñach, Ricardo Surriñach, Camilo Surriñach and María A. Surriñach, Ursula Vidal Vda. de Dominguez, Santiago Saenz, Adolfo Ramirez de Arellano y Lugo, Alfredo Ramirez de Arellano y Rosell, Quintin Ramirez y Ramirez, Pedro Aran y Cuaseu and the American Trading Company all either bought portions of the property involved, or took liens upon the same, or bought some of the outstanding Bandilio Duran y Cat 13,000 peso- negotiable promis-ory notes, secured by the mortgage given on some of the property; but all these persons became interested long after the filing of the original bill, and some of them as late as 1905 and 1906. They all claim to be innocent purchasers for value without notice, and that in the absence of a cautionary notice after the filing of the bill, and because of seeing Aran and his vendees in peaceable possession of the property and dealing with it for several years, as aforesaid, with good recorded title, they are free from liability in the premises under the Mortgage Law of the Island, and as laid down in the recent decision of the Supreme Court of the United States in Romeu *v.* Todd aforesaid.

This bill itself was not under oath; it was presented as a set of allegations, merely signed by counsel, and an answer under oath to

it was waived. Notwithstanding this waiver, after a good deal of dilatory pleading and delay about it, an answer by J. Tornabells & Co. signed by Doitteau was put in under oath on October 3, 1904,
to have effect as of date October 6, 1902, the delay occurring
92 for lack of signature to the first one, the same date that a similar one sworn to by himself and another sworn to by Tornabells had been filed.

These answers admit the making of the original transfer by and to the original respondents, as set up in the bill, but emphatically deny each and every allegation of fraud or evil intent with reference thereto, and insist that the transfers were in each instance made for full value, and for actual cash or its equivalent, or to pay debts, as set out in each of the instruments referred to, and that the money realized by respondents J. Tornabells & Co. was duly used in the ordinary course of the liquidation of their affairs and in the payment of their debts honestly and properly in every way, and that Tornabells & Company retained no secret interest or benefit in the said property, or any portion thereof, after the transfer to Aran, and did not remain in possession or control of the same; and assert that Tornabells & Co.'s receipt given to Aran for the large balance of the purchase money a little more than a year after the making of the principal transfer, was made in good faith because of the transfer therein referred to, and the receipt of the money or its equivalent less the discount in said receipt set out.

On October 2, 1905, and by leave again in September, 1906, the widow of Tornabells, representing herself and her said then deceased husband, and his other heirs, and also representing her husband's then deceased partner, Carlos Doitteau, filed an amended answer, adopting and restating all former answers, and again with much more particularity denying all fraud, and alleging in detail good faith as to every one of the transactions, and setting out at length the mode of payment by Aran to her said husband's firm, J. Tornabells & Co., for the vast estate which the firm had transferred
to the former, and following her husband in asserting that
93 the price for which the estate was sold, was the reasonable and fair value of the same at the time. She repeated, as her husband did, that 30,000 provincial pesos were paid in cash at the time of the transfer. That $17,156.92 were paid by said Luis Aran on June 29th, 1901, which was made up of a series of credits totaled and entered up in favor of said Aran by J. Tornabells & Co. on account of various sums of money which said Aran had furnished the firm at various times up to that date. That there then remained due a balance of $96,031.08 which was thereafter satisfied and discharged as follows: A credit was given to Aran of $38,779.33 on account of a discount for immediate payment of the deferred payments which ran for ten years into the future at the rate of 16,700 pesos per annum, without interest; that another credit of $6,799.54 was also totaled and entered up in favor of Aran, as detailed in the books of the firm, up to September 13, 1901, on account of various small sums paid by him, and for which he became entitled to credit.

That on the 13th day of December, 1901, there remained a balance due by the said Luis Aran to Tornabells & Co. on account of the said purchase money, of $50,452.21, and that upon said date there was paid in cash by the said Aran to J. Tornabells & Co. the sum of $45,639.40, leaving a balance of only $4,812.81 due on that date, which was thereafter satisfied by various sums paid from September 26, 1901, until April 1, 1902, all as appears by the detailed accounts thereof kept by the said Luis Aran with J. Tornabells & Co. and vice versa. That these payments were the reason for the giving of the final receipt by J. Tornabells & Co. to respondent Aran on September 13, 1901, and that the same was true in fact as to final payment in every sense. She also denies emphatically that her husband's said firm was insolvent, even though in suspension of payments in 1900 at the date of the making of the transfer. Then her answer proceeds, reiterating, supplementing and approving
94 the previous sworn answers of her said husband of October 6, 1902, and the answers of his counsel of October 2, 1905.

Also in September, 1906, the widow of the respondent Luis Aran y Lanci filed her amended answer as representative of herself and her said husband's heirs, and she corroborates in detail the said final answer filed by Tornabells' widow as aforesaid, and with equal emphasis denies each and every allegation of fraud and alleges the best of good faith, and that reasonable and full value was given and received as to all the transactions. In addition, she denies that the mortgage to Baudilio Duran and Duran & Coll was in any sense pretended or fraudulent, but alleges the good faith of the same for full value received in each instance, and she gives in detail several transactions between Duran & Coll and Tornabells & Co. and her husband Aran in the nature of accommodations to each other, that goes to some extent in explanation of some of the transactions between those persons referred to in these proceedings.

Both of these widows in their above referred to answers, give details as to the creation of the debts claimed to be due to complainants herein, but the widow Aran is still another amended answer filed by leave as recently as February 2, 1907, pleads the statute of limitations of one year against the filing of the bill in the first place, and then sets up for what it may be worth, the alleged fact that the debt due to complainants Alberto Will & Co. was based upon accommodation drafts of Schulze & Co., a neighboring mercantile firm of Mayaguez, on which J. Tornabells & Co. were mere accommodation endorsers, and which had been drawn in the month of April, 1898. She alleges that Schulze & Co. was the principal payor of the same, and that in May, 1900, at the time of the transfer complained of, no liability of the said J. Tornabells & Co. had been deter-
95 mined by any suit or judgment against either said Schulze & Co. or Tornabells & Co. on such commercial transaction, and that no judgment was rendered against Tornabells & Co. thereon until April, 1902, some two years after the transfer complained of here. She further alleges that as to the claim of David Midgley & Sons, it was based on a general indebtedness of £1160 for merchan-

dise sold by them to the respondents Tornabells & Co. on the 1st of January, 1901, or some eight months after the transfer complained of, and several months after it had been recorded; and further she contended, for what it may be worth, that said firm therefore did not extend the credit to her husband's firm on the stren-th or faith of that firm's ownership of any of the property which had therefore been transferred by it. She further alleges that no judgment was obtained upon such claim until April 22, 1902, or practically two years after the transfer complained of. She further alleges as to the claim of complainants Ramon Cortada & Co., that it was based upon a general indebtedness of $3,480.00 of August 14, 1900, but wh-ther created on that date or not is not stated; that it was for merchandise purchased by Tornabells & Co. and that no judgment was obtained on account of the same until the 21st day of January, 1902, or more than a year and a half after the transfer complained of. She further states that as to the claim of L. W. & P. Armstrong, no judgment has ever been obtained upon the same against Tornabells & Co., and that the same remains to this day simply -s general indebtedness, amounting to $8,473.54, as recognized by J. Tornabells & Co. on the 8th of December, 1899, but that said L. W. & P. Armstrong never at any time before or since the transfer complained of, obtained any lien of any sort on the property of J. Tornabells & Co. to secure the same.

In the original bill and several other of the pleadings it was alleged that respondent Luis Aran was not in the Island of
96 Porto Rico at the time of the transfer to him of the property in question, and that he was represented in such transfers by the respondent Alfredo Saliva. The latter denies this in his own answer, filed October 6, 1902, and practically all the other answers make a similar denial thereof, and on proof at all competent was introduced in denial of the assertion of the notary who drew the original transfer that Aran was then in fact present in person.

On October 6, 1902, the respondent Juan Coll y Soler, one of the mercantile firm of Duran & Coll and a partner of Baudilio Duran, who it is claimed is the figurehead in the big mortgage received from Aran, filed, through his solicitors, an answer setting up the *bona fides* of the entire transaction as to Duran & Coll, and asserting that the debt of 20,000 pesos was due his said firm from respondents J. Tornabells & Co., and that Aran assumed it through the medium of the mortgage because of his indebtedness to said firm; that thereafter a portion of said debt was paid to them by Tornabells himself on account of Aran, but counsel for respondents claim this is explained by the evidence of witness Koberg and others, and the exhibits, the same occurring naturally and honestly, as it is claimed, in the ordinary course of business between J. Tornabells & Co. and Aran after the transfer complained of, but Coll's answer shows that the unpaid balance of his firm's debt is still due. Coll's answer further shows that his firm's transfer to Valdecillo of a portion of its said mortgage as security was made in the best of faith and for a valuable consideration without any fraud of any kind.

Respondent, the American Trading Company, which is a holder

of one of the endorsed 13,000 peso notes from Luis Aran to Baudilio Duran, files an answer on January 31, 1907, and sets up the facts as hereinbefore stated, and that the note it holds was
97 endorsed by Baudilio Duran, the original payee, to one Martin Serra, which latter person transferred it to the said American Trading Company for a debt due the latter by the son-in-law of said Serra, one Palau, which said Serra chose to pay for his relative, and that it is now the owner of said still unpaid note so secured by said mortgage, without notice of any proceedings herein, and that because the mortgage antedates this suit, and none of the transfers were attacked within a year, and because no cautionary notice was filed in the registry of property, complainants can have no cause of action against this particular respondent, etc. This same respondent then files a cross-bill praying the Court to foreclose the mortgage and have its money paid to it, but the Court held the same in abeyance, and it has not been pleaded to, on the ground that this sort of affirmative relief between respondents cannot be obtained in this class of action.

At the hearing, counsel for complainants introduced in evidence in the way of exhibits, transcripts from the registry of property, showing all of the principal transfers above referred to, Naturally these papers are immense as to size and contents because of the detail that is customary in a Spanish deed or mortgage, such as showing how much of the debt and the possible costs each piece of land as described, shall be liable for, and how particular pieces can be released on the payment of particular portions of the debt, etc., and because of the peculiar provisions of the immense Baudilio Dura-mortgage, securing the ten 13,000 pesos notes, etc. These records of course purport to show the acknowledgment of the receipt of the original cash down payment of 30,000 pesos and of the final payment of the balance of the entire 197,700 pesos purchase price by Aran to Tornabells.

If the contention that is insisted on by counsel for complainants with reference to the status of the pleadings is to prevail, then this is practically all the evidence there is in the case, and the
98 Court is forced to do its guessing from the largely unproved and unsworn to allegations of the bill, and the scraps of competent testimony introduced at the hearing. It is contended that because the bill is not sworn to and respondents did what would be called at law, demurring to the evidence, that is, rested at the end of complainant's case, and refused to proceed further, that then even though Tornabells, Doitteau and Aran have their own sworn answers in, and their widows later filed specific answers, the same cannot be considered for any purpose because not supported by oral proof, and that this condition of things simply obliges complainants to prove the several statements of their bill by one witness only in each instance. Complainants contend that they have done this, particularly if the evidence of one of their counsel, Mr. Cornwell, is admissible, and that in any even even without Mr. Cornwell's evidence, the exhibits and the other scraps of testimony make such a case of circumstantial evidence of fraud and throw such suspicion on the

respondents as that the court is bound to enter a decree for complainants.

It is not often that such a condition of the pleadings arises. Usually a hearing in chancery goes out to a referee or master and he takes all the proofs, makes his findings of fact or law or both, as the case may be, and reports to the Court. To be frank about it, we see no reason in theory and we are not familiar with any rule or authority, nor have we been cited to any, that would deny to these respondents in this suit in equity any more than if the same were a suit at law, the right to rest at the end of complainants' case and refuse to introduce any testimony in support of their answers or any other denial of the allegations of the bill, if they believe, as they say they do, that no case has in law or in fact been made against them.

99 It might be stated here in justification of counsel that they claim this "stand pat" action of theirs is taken not from any desire to hide a fraud, but because they honestly are of the opinion that complainants have not made a *prima facie* case, and moreover are guilty of inexcusable delay in and about the prosecution of their suit for so many years, and because since the filing of this suit, the original debtors Joaquín Tornabells & Carlos Doitteau, as well as the original transferees Luis Aran y Lanci and Baudilio Duran y Cat, have all died, and that the books of both the original respondents in the hands of the widows or the liquidators, are quite as accessible to a subpœna *duces tecum* at the request of complainants, as they are to respondents, even though it should transpire that there is nobody alive or obtainable who has intimate knowledge of the contents of such books or who could explain them on the stand. Without commenting on the sufficiency of this excuse under the peculiar circumstances of the case, we desire to state with reference to the testimony introduced by complainants that it is indeed meagre and in the extreme unsatisfactory. In fact, during the hearing we at times were annoyed at the very evident appearance of fear or evasion shown by the witnesses called, and at other times felt a sort of sympathy for complainants in their efforts to bring out the truth, as we thought, against every obstacle that could be put in their way. This belief was strengthened when we noticed that several important witnesses were unaccountably absent and several others, instead of responding to process, sent in physicians certificates alleging their inability to be present. In spite of this feeling, a through examination of the record, and the cold law, in the light of all the surrounding circumstances, has driven us back, to a consideration of the whole case from as impartial a point of view as we are capable of.

100 Complainants called about a dozen witnesses in all in an effort to show that Baudilio Duran, the person to whom Aran gave the large mortgage, never had anything to do with the transaction except to permit his name to be used, and to endorse the ten 13,000 peso notes and give them back to Aran, who it is contended at once gave them to Tornabells, the latter presumably using them in and about the satisfying of his creditors just as he would use mortgage bonds. It appears that this sort of note is something well known to the Spanish law, and that they are called,

'vales hipotecaries.' To tell the truth, complainants manifestly failed in their proofs in this regard. Their testimony is so piecemeal, and so uncertain even when drawn from the witnesses introduced by a cross-examination by counsel for complainants who introduced them, and is in and of itself so unsatisfactory as a basis for asking a court to disturb a vast amount of title as to make us falter at the proposition, while at the same time it leaves in our mind an unsatisfied feeling as to the honesty of the transaction and the good faith of respondents.

Counsel for respondents in their oral arguments and in their briefs become almost bitter in their objection to the attitude of Mr. Cornwell, one of the counsel for complainants, for testifying at all in the cause, and against the admissibility of his evidence. Assuming as we do, as Mr. Cornwell is an intelligent and an honorable man, that he firmly believes his position to be right, and that he honestly believes the communications of Tornabells to him are not privileged because the same were a request for advice as to how to commit a fraud, as to which proposition of law Mr. Cornwell, we believe, is surely right; then that being true, it is not only his privilege, but his duty to disclose the facts to the Court. We say this notwithstanding the comments of opposing counsel as to the indelicacy of his position because of his being now on the opposite side of the issue that arose as a consequence of the communication he testifies about, and is interested in the cause to the extent of a large
101 contingent fee as he confesses.

The purport of Mr. Cornwell's evidence is that he had been for several years previous to the making of the transfer complained of, general counsel for the large mercantile house of Tornabells & Company and very friendly with the members of the firm; that about two months before the transfer complained of, was made, Tornabelles and Doitteau, the two members of the firm, accompanied by the French Consul, a friend of theirs, but without Aran being present, called at his office and unfolded a "scheme" whereby they intended to place the assets of the firm beyond the reach of creditors, etc.; that Aran was not mentioned in this "scheme;" that he told them it "was not straight," and advised them to go into bankruptcy; that he could not represent them in anything of that sort, etc., that they knew at this time he represented some of the complaining creditors and others; that then they left, nothing further being said about the matter, but that before leaving Tornabells confessed that he had no intention of ultimately defrauding any of his creditors, etc.; that in about two months thereafter the transfer in question was made and shortly thereafter appeared of record; that he spoke to them several times after the transfer was made, and that they virtually acknowledged all about it, etc. It further appears that Mr. Cornwell and his firm continued to represent this firm thereafter in many suits and proceedings which he contends had all been begun before the incident here mentioned, and it is in evidence that when Cornwell's firm afterwards brought suit for one of the complainants in this case on the law side of this Court against Tornabells, that the latter came into Cornwell's office

and signed a confession of judgment thereon, which was there prepared for him, and that this occurred more than a year after the making of the transfer complained of.

A most careful reading and rereading of Mr. Cornwell's evidence is unsatisfactory to our mind, on the point that he was in
102 fact justified in assuming that Tornabells & Co. really wanted to do anything that could be justly characterized as any such fraud as was at that time prohibited by the laws of Porto Rico, or that he desired to make any disposition of the firm's property that he did not have full right to make at that time, or that would take his communication to Cornwell out of the well known line of privilege in such cases between attorney and client, for Tornabells in our opinion on the facts, much as we regret to disagree with Mr. Cornwell, undoubtedly consulted him in his professional capacity as an attorney, even though the French Consul was present at the time, he being such an intimate friend as that he could not, in our opinion, be held to be a stranger in the sense of the rule. Therefore we have grave doubts whether Mr. Cornwell's statement ought to be received at this time, because it is the admission of a dead man against the interest of his own heirs, and the same rule is, we think, applicable as to Mr. Cornwell's evidence with reference to Aran. Furthermore, on mature reflection, we think that that portion of his evidence telling how the widow of Tornabells recently came into his office and endeavored to make some contract with his firm to furnish evidence for their use, of this fraud in consideration of getting some of the property to be recovered for herself, which he refused to consider unless she would bring some business man with her to be a witness to it, ought not to be admitted because it is at best but a statement by a third party intended to impugn after the fact, the *bona fides* of a transfer, the parties to which are now all dead. At most it is but hearsay, and she being a living witness and present in the town at the time, might easily have been put on the stand herself even by complainants, if her testimony could be received at all, of which we have grave doubts.

Therefore, if the mere unsworn allegations of the bill are
103 not evidence, and if the sworn answers and the unsworn answers in all their detail cannot be received as evidence in the absence of proof to substantiate them, it would seem as though there was nothing in the case in the way of receivable proof but the few admissions of the several answers and the exhibits from the public records and deeds, and the few scraps of unsatisfactory testimony from a few of the many other immaterial witnesses introduced, and this is the sort of record we are seriously asked to consider sufficient to warrant us in depriving several persons of a hundred thousand dol-ars worth of property? We say this notwithstanding the fact that we have, as stated, from our examination of the demeanor of the witnesses, an abiding conviction that they were either as a whole uncommonly stupid or were making a deliberate effort to hide some facts they ought to have known; but the Court is not here to deprive people of their property or property rights, without due process of

law, and no chancellor however conscientious, can depart from the unswerving rule that upon the plaintiff or complainant in every case is imposed the burden of proving the allegations he makes, and that when proved they must entitle him to the relief he asks for. A chancellor's conscience abhors guessing at facts as much as it abhors fraud itself, and when proof is lacking, he should suffer upon whom the law imposes the duty of presenting it.

While stating this, we admit that there are many cases, especially in equity, where after a *prima facie* case has first been made by complainants, and where surrounding circumstances throw suspicion upon the acts of respondents, in which many presumptions are properly indulged against them. Especially is this the case when respondents fail to remove such suspicions when the proofs show that it is probably easily in their power to do so. See Kirby *v.* Tallmadge, 160 U. S. 379. In the case at bar, we have the
104 gravest doubts that a sufficient *prima facie* case has in fact or in law been made against the respondents. Our hesitation in this regard is increased because of the great probability that the property was in fact paid for in the manner set out above and the money used in paying the firm's debts.

Judge Pettingill, of counsel for complainants, as we gather from his uncommonly able and exhaustive principal brief, seems to have a full appreciation of the existence of good cause for this hesitation on our part, and hence he devotes a considerable portion of his effort to pointing out to us in detail, what he considers to be five badges of fraud in the case, which he claims have been duly proved and which he contends of themselves raise such suspicions and presumptions as that, even in the absence of Mr. Cornwell's evidence, they make a *prima facie* case that should at least have forced respondents to a defense, in the absence of which, complainants ought to be entitled to a decree.

It would be unfair to counsel, not to consider the points he thus makes. To state them succinctly,—as the first badge of fraud, he points out that the transfer complained of was an alleged sale of practically all of Tornabells & Co.'s assets, while deeply indebted and probably insolvent,—and that it was made on long time without any security which was supplemented in a few months by Duran, a cousin of Tornabells, injecting himself into the equation and becoming the conduit for the passage and commercial floating of the ten large negotiable promis-ory notes; and he further points out that this whole transaction, involving nearly two hundred thousand pesos, was carried on apparently without the intervention of any bank or other outside person having anything to do with it. While we admit that the import of the whole case is that the transfer was of practically all of Tornabells' property, there is really no positive evidence on that subject, and counsel for respondents,—based
105 upon what, we do not know—unless on matter outside the record from the suspension of payments proceedings, contend that the firm had a vast additional amount of property remaining at that time, which they continued in liquidation of for several years thereafter. And as to there being no intervening outsider or

banker, that appears to be possible because of conditions at the time in the Island just after American occupation and because of the sort of transaction consisting of partial payments, swapping of accounts, etc. It must not be forgotten that even the exhibits introduced by complainants show the receipt by Tornabells of these 197.700 pesos in detail, less the discount allowed. With all due respect, we contend that no satisfactory proof that this payment was not made, has been introduced, and the duty and the burden to do so was upon complainants, as they alleged no consideration at all passed for the transfer.

The second badge of fraud is alleged to be the failure to apply the consideration received for the property to the payment of any of the debts of the partnership. We do not think this is a fair presumption from even the scanty evidence before us, for we do think it shows if it shows anything, that every dollar of that money was applied in some way to pay the debts of the partnership. And in this connection we might refer to Mr. Cornwell's' statement that the widow of Tornabells' when she called on him, said that she and her children were almost in poverty and distress. Let us not forget that according to what evidence there is, more than half the consideration paid by Aran was in small sums and in payment of debts of J. Tornabells & Co. This is in evidence quite as much and with equal force as the allegation that no consideration at all was paid. No other creditors than these complainants are here protesting that they have not been paid, and none of them forced the concern into bankruptcy.

105 The third alleged badge of fraud is that the consideration, though alleged to be an amount equal to the full value of the property, complainants claim that no consideration in fact passed. With all due respect, we cannot admit that the proofs show any such thing. Nor can we see how such a claim on the part of complainants can of itself be a badge of fraud. The original deed shows the receipt of 30,000 pesos, and the receipt filed in the recorder's office some months later shows a receipt of $45,000.00 in cash and other large sums made up of credits to which Aran became entitled, and not one word of this has been denied by proof of any kind, and the evidence said to throw suspicion on it, in our opinion, tends as much to establish its truth as its falsity, and this without giving any weight to the sworn answers of the original respondents.

The fourth alleged badge of fraud is that both Tornabells and Aran had possession of, and used the mortgage notes which, if given at all, were given by Aran, their payor, and should have been in possession of, and used by Duran, who was the payee. We admit that there is some testimony on this point, but after reading it over more than twice carefully, we fail to find that it is sufficient to show that Tornabells in fact remained in possession of the notes, and it fails utterly to show that he remained in possession of the property. In looking at such a matter as this, one has to take surrounding circumstances into consideration, that is, the relation and friendship of the parties, their mutual aid, their situation in a small town, the distressed condition of things after the hurricane and the war, and the present situation of the property in the hands of the vendees and

lienors of Aran, and the fact that the deed is absolute on its face, and there is no evidence showing that Aran himself ever for a moment acknowledged to anyone that any secret trust existed in favor of Tornabells or his family, and it is, we think, unques-
106½ tioned that some of the Duran notes are now in the hands of third parties assigned for a debt that was not Tornabells. We admit that there is a lot of evidence of a very unsatisfactory character as to where these notes were found at times, and what they were used for, and how some of the property was relieved from their effect and mortgaged to others, but every witness that was introduced, notwithstanding the peculiar character of his evidence, claimed to have paid value for the notes when received, and these it must be remembered, were complainants' own witnesses who proved to be adverse, but this does not in our opinion relieve complainants from the burden that is on them and remains with them all through the case, to prove their allegations in this regard. One witness introduced by complainants did testify rather positively about Tornabells using one of these notes, but it was drawn out on cross examination that he is the representative of one of the complainants and largely interested in the result of the suit, and to tell the truth we must confess that his story was rather improbable and did not impress the Court as any too exact, and we would be unwilling to deprive anybody of his title on his statement.

The fifth badge of fraud is somewhat of a repetition and is alleged to be that the property pretended to be sold, always remained in possession of the vendor Tornabells. This allegation must be the result of the impression made on counsel's own mind by what he expected to prove, because, as stated, we do not think that has been proved. On the contrary, the evidence tends to show that the property has been since the day of the sale, and is now in possession of Aran or his vendees or mortgagees, or was until the receiver took it away from him or them. On this subject of possession we might state that we wholly discard the evidence of the witness Rivera as unworthy of belief, either pro or con. This was a witness who had been brought to the office of counsel for complainants some
107 week or so before the hearing by old lady Tornabells to show the possession in her husband after the transfer, when she expected to make a bargain to furnish the evidence of the fraud. Notes were taken of what we would testify to, but when put on the stand, he testified to the direct opposite, and then proof was made of his former statements.

Now let us consider another phase of the case. There is not now, and never was any such statute in Porto Rico, as the Statute of 13th Elizabeth in England, referring to fraudulent conveyances, because we have the civil law rule here instead of the common law. Every State in the Union has a re-enactment of this Statute of Elizabeth in some form or other among its laws. (See Vol. 14 Am. & Eng. Ency. Law 2nd Ed. p. 223). In the absence of it, there is no rule of law preventing a debtor, even when insolvent, for even that does not take from him the power of disposition of his property, from doing about what he pleases with his property, and paying his debts

with it or a portion of his debts, and preferring one or more of his creditors with absolute intent to hinder, delay or even to defeat other creditors. If the favored creditor receives no more than is due him, and permits the debtor to secure no advantage to himself, the transaction will be upheld. *Ibid*, pp. 225-226, text and notes. McClellan *et al. v.* Pyeatt *et al.*, 66 Fed. Rep. 843. Crawford *v.* Neal, 144 U. S. 595.

As stated, the time of this transaction was just after the great hurricane of 1899, which devastated the Island of Porto Rico and reduced coffee merchants to such straits that all their neighboring merchants and the wholesale men, who were carrying them, appreciated their condition and endeavored to help them along by extensions of time. Merchants here were not used to such things as creditors' bills. No court of chancery was known to them before American occupation, and this fact is important when we attempt to determine what was the intent of the respondents in this
108 transaction.

Tornabells & Co. had themselves already secured a suspension of payments through the local courts, and it was natural that they should make some effort to realize from their property with a view to paying some portion, or the whole of their debts. We cannot see why they did not have the right to do this, and to prefer any creditor they saw fit to prefer, and why creditors did not have the right to exercise diligence in securing their debts from them in any way they could. We can not see why J. Tornabells & Co. could not have done all that is alleged in the way of transferring to Aran, and the latter mortgaging to Duran so as to get secured notes to use. There was nothing wrong about that unless Tornabells & Co. kept or reserved some benefit to themselves. If it was simply a unique system of banking, there was nothing wrong about it; and if the notes were to be spread broadcast for value, or given to particular creditors, and the property that backed them was effectually lost without privilege of redemption to J. Tornabells & Co., we are wholly unable to see what was illegal about it.

Let us suppose that Tornabells & Co. instead of selling their property to Aran, had directly themselves issued their own notes secured by all this property, and had sold these notes in the open market just like bonds. What would have been wrong about the transaction? After the sale of the notes, attacking creditors at most could only go after the equity of redemption. They could not set the transaction aside, nor embarrass the holders of the notes in any way, and if the property was all eaten up in payment of the notes, that would be the end of it. Now how is this case materially different from that sort of case? That is why in the light of the evidence of the actual payment by Aran for this property, we are unwilling to disturb the titles of so many people, on a mere suspicion that Tornabells & Co. may have had some secret understand-
109 ing with Aran and Duran.

I do not know that it ought to be wondered at that these witnesses holding these notes or this property, were timid and loth about testifying, through fear of losing the property they may have bought in the best of faith.

We can well see that respondents may be embarrassed about boldly setting this up, because the pleadings have got into such mixed condition after this long delay, owing to complainants' failure to timely begin or diligently prosecute their suit until after the death of all the original respondents, as that they cannot show this as the true state of facts. Respondents were put to a decided disadvantage as to making their proofs and have some justification for resting their case flatly on the ground that complainants have not shown themselves entitled to any relief whatsoever against them.

In the State of Alabama, a debtor has a right to prefer a creditor, and it was held by the Supreme Court of the United States in the case of Bamberger *v.* Schoolfield, 160 U. S. 150, appealed from that State, that when a sale is made to a creditor for a fair price to extinguish the debt, and it contains no reservation or interest or benefit to the vendor, it is a valid transaction even though the vendor was insolvent at the time and the vendee knew that fact, and further knew that the vendor had a fraudulent intent to defraud his other creditors by the preference when the sale was made. And that case further holds a point which we consider of great weight here, that when in such a case it is contended that the trade was simulated and that there was a secret trust or benefit reserved to the debtor, the burden is on the contesting creditor to establish it. Respondents contend that in the case at bar, complainants must show the secret trust and the reservation in favor of Tornabells, and that they have utterly failed so to do. We commend counsel to a reading of the case last cited because in our opinion the facts in it were
110 decidedly more in favor of complainants there than are the facts as proved in the case at bar.

In the case of Horbach *v.* Hill, 112 U. S. 149, the Supreme Court holds that a debtor has a right to dispose of his property in the ordinary course of business for a valuable consideration and the defendant has a right to purchase it, and complainant must show that he was a creditor at the time or he cannot complain. It further holds that even a voluntary conveyance, that is a gift, is good as against subsequent creditors unless executed as a cover for future schemes of fraud.

In the case of Davis *v.* Schwartz, 155 U. S. 631, it was held that in the State of Iowa a creditor may make a mortgage or other conveyance of his property to one or more of his creditors with intent to give them preference. This is a most interesting case and is very instructive on the points involved here.

In Rice *et al.*, *v.* Adler etc., 71 Fed. Rep. 151, it was held that in the absence of a bankrupt or insolvent law, a debtor may lawfully pay one creditor to the exclusion of others by consenting to a judgment in his favor, and the fact that the transfer is accomplished quickly and secretly is immaterial. This is also an instructive case on the subject.

It is perhaps some indication that J. Tornabells & Company paid most of their debts, when only some half a dozen creditors are attacking them in this suit, because we may presume they had a large number of creditors when they went into suspension of payments.

And we might indulge some presumption also that when a firm is in suspension of payments, the creditors themselves are looking out for their rights to see that no wrong is done. Mr. Cornwell, the attorney for the original two or three complainants here knew all about this transfer, yet he did not attack it for more than two years after it had taken place. When considering the rights of third
111 parties, a court would be inclined, because of this neglect, to say that complainants were estopped by their own laches.

We might have decided this case without writing more than a page, were it not that we felt it was due counsel to set forth our views as to the case under the conditions that obtained when it was argued. We will therefore not quote from the Romeu *v.* Todd decision *supra,* because its terms are already well known to counsel and the bar generally. It is a legal guide light in the judicial history of this Island. It holds, as we read it, that the chancery rule of *lis pendens* has no place in Porto Rican jurisprudence because of the peculiar status of this court, the phraseology of the Foraker Law and the requirements of the mortgage law of the Island.

We are therefore inclined to think that the law in Porto Rico is that good recorded title in the registry of property fully protects innocent purchasers for value without notice at all times, and probably protects them even with notice after one year in cases where the conveyance was made in fraud of creditors. However, as we hold that no *prima facie* case was made by complainants here, our views here expressed as to the scope of the Romeu-Todd decision are not important.

Counsel for complainants, since news of the decision in Romeu *v.* Todd was brought to the Island, because of the fact that this side of the cause has proceeded on the theory of the chancery rule of *lis pendens* being in force, has requested us to grant a new hearing in the premises in the interest of justice so that argument might be made as to the effect of this decision of the Supreme Court of the United States, and permit his side to show actual knowledge on the part of some or all of the respondents of the pendency of the suit and the fraud intended by Tornabells & Co. We have given consideration to this respectful request and appreciate its reason-
112 ableness, but we fail to see how granting it could affect the result we have here arrived at.

Therefore, for all of the reasons in these views set forth, we are constrained to hold, and do hold that the complainants have not made such a *prima facie* case as entitles them to a decree in the premises, and the motion to dismiss the bill will be sustained.

The receiver herein will be required to at once make a complete report in the premises. The Court will settle his accounts and see to it that all of his proper debts as receiver are paid, and will not release the property until this is done, and allow him reasonable compensation and deduct it from the funds in his hands, if any, and will at once distribute any money that may remain in his hands, to the persons to whom it justly belongs, after the deduction of the costs and expenses connected with the receivership and will then order the receiver to turn over the several estates to the parties en-

titled to them. And it is hoped that the parties interested will facilitate this being done and aid in the settlement of the present annoying situation brought about largely because of a view of the law which it was reasonable to take.

Let proper decrees be prepared under this opinion to carry out its intent, and the whole matter will be considered as interlocutory until the receiver is finally discharged.

B. S. RODEY, *Judge*

113 *Journal Entry, June* 29, 1907.

In Equity.

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Final Decree

This cause having come on to be heard at this term, and all of the parties hereto having by their respective counsel agreed that all of the evidence to be adduced herein shall be presented orally in open court on final hearing instead of the taking of testimony before an examiner of the court, complainants proceeded to offer evidence in support of the allegations of their bill of complaint and to sustain the issues made herein upon the answers filed thereto by the respective defendants.

After complainants had presented all the evidence which they desired to offer upon their part, all of the defendants by their respective counsel moved that the Court dismiss the cause and the bill of complaint herein for the reasons that upon the allegations of the said bill of complaint and the evidence so offered by the complainants as aforesaid in support thereof and of the issues made herein, the said complainants were not entitled to the relief prayed for by them.

The defendants, with the exception of the American Trading Company, declined to offer any evidence, and the said defendant, the American Trading Company, having offered in evidence certain documents to support the issues herein,

It is therefore Ordered, Adjudged and Decreed that upon the allegations of the bill of complaint herein, all the evidence offered by complainants in support thereof, and such admissions as may have been made by counsel material to the issues herein, the said complainants have not established or made out a case which en-

114 titles them to the relief prayed for by them in their said bill of complaint and having so failed to establish a *prima facie* case for the granting of the equitable relief so prayed for as aforesaid, the motions of defendants respectively, to dismiss the said bill of complaint and this cause are sustained, and

It is further Ordered, Adjudged and Decreed that the equities of the case are with the defendants and that complainants are not entitled to recover upon the allegations set forth in their bill of complaint.

Under all the circumstances of the case, it is Ordered, Adjudged and Decreed that the costs of this case shall be paid out of the funds which may remain in the hands of the Receiver upon the final settlement of his accounts.

It is further Ordered, Adjudged and Decreed that the Receiver herein, upon the presentation and approval of his accounts, be discharged, but as to such receivership and for the purpose only of terminating the same properly, the Court reserves the right to make such orders herein as may be necessary, but in all other respects this decree is, and shall be final.

To the foregoing decree complainants except.

115 *Findings of Fact by the Court Upon the Pleadings and Evidence in the Above Cause.*

(Filed December 19, 1907.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

1. The complainants filed a creditors' bill on June 23rd, 1902, alleging that they had severally recovered judgments before that time for various amounts, all of which were within the jurisdiction of this court. After complicated pleadings, an issue was joined, after which the bill was dismissed as to some defendants and other defendants were brought in by supplemental bill under the order of the court.

2. Evidence has been heard on behalf of the complainants and at the conclusion of said evidence, the defendants elected, with one exception, not to produce any, and moved for a decree dismissing the bill on two grounds, that the allegations of the bill had not been sufficiently proven and that the action was prescribed or barred by the statute of limitation of one year before it was brought.

3. The documentary evidence introduced on behalf of complainants and the testimony of all the witnesses do not prove the allegations of the bill so as to entitle the complainants to a decree in their favor declaring the conveyance from defendants Tornabells & Co. to defendant Aran, and the mortgage from defendant Aran to defendants Duran y Coll and Duran personally to be voluntary or made to hinder and delay the complainants in the collection of their debts.

4. On May 2, 1900, Tornabells & Co. transferred their large stock of merchandise and twenty-six parcels of real estate to Luis Aran for a consideration of 197,700 pesos, provincial money, which
116 had a value of sixty cents in the dollar of gold, of which amount 30,000 pesos were paid in cash and the balance was to be paid at the rate of 16,700 pesos per year for ten years without interest and without security. This conveyance was recorded May 21, 1900.

5. The foregoing conveyance covered practically all of the property belonging to said firm of Tornabells & Company.

6. On the 11th day of May, 1900, Luis Aran made a mortgage on fourteen of the most valuable of the twenty-six parcels of real estate, so conveyed to him by Tornabells & Co. in favor of Baudilio Duran y Cat to secure ten promis-ory notes for 13,000 pesos each, executed by said Aran in favor of said Duran, one of which matured and became due each year thereafter until the year 1910. In the same deed said Luis Aran further mortgaged five other tracts out of said twenty-six to the firm of Duran y Coll, of which one member was the same Baudilio Duran y Cat, to secure a pre-existing indebtedness from Tornabells & Co. to said firm of Duran y Coll of 20,000 pesos, which indebtedness according to said mortgage was to be payable at the rate of 4,000 pesos per pear for the next five years.

7. Said Baudilio Duran y Cat was a first cousin of Joaquin Tornabells, senior partner of Tornabells & Co.

8. Under the mortgage mentioned in Finding 6, the lien of the total indebtedness was not made a charge upon each and every parcel of property, but was distributed over the several tracts mortgaged, each tract of land described being charged with only a specific portion of the whole debt, upon the payment of which portion any tract might be released from the lien of said mortgage. Said mortgage was duly recorded on May 24, 1900.

9. None of the judgments against the firm of Tornabells & Co. on which complainants base their creditors' bill in this case, were recovered until more than one year after the foregoing transfer from Tornabells & Co. to Luis Aran, but the debts for which said
117 judgments were obtained, existed in the form of open accounts or protested drafts, on which said firm was liable before said transfer; and the bill of complaint was not filed until a little more than two years and one month after such transfer, and no *lis pendens* notice was recorded in accordance with the local mortgage law.

10. On the 18th day of June, 1902, defendant Banco de Soller took its mortgage from Luis Aran on one of the tracts of land included in the conveyance aforesaid from Tornabells & Co. to Aran; but said indebtedness secured by it, which amounted to 32,780 pesetas, Spanish money, was a pre-existing debt of Tornabells & Co. to said bank; and, in case said debt was not paid, Tornabells & Co. remained responsible therefor and the land described should be liable under the mortgage, but said Aran incurred no personal responsibility.

11. On the 7th day of February, 1903, defendant firm of Fritze, Lundt & Co. took their mortgage from said Luis Aran to secure an indebtedness of 16,600 gold upon two of the properties included in the same conveyance aforesaid. Previous to the taking of said mortgage, Luis Aran had delivered to said Fritze, Lundt & Co. one or more of said mortgage notes (not then due), which had been made by said Aran in favor of said Duran, to be held as security for his current account for supplies furnished for the cultivation of properties so conveyed by Tornabells & Co. as aforesaid; and when this account amounted to the aforesaid sum, said mortgage was taken in place of said notes to secure the same, and said notes were returned

to said Luis Aran. In this mortgage also it was stipulated that Aran, the mortgagor, should not be personally liable for the payment of the debt.

12. On the 16th day of September, 1905, Luis Aran deeded five other of the properties, included in the aforesaid conveyance from Tornabells & Co. to him, to the defendant Surriñach for a consideration of $14,037.89, but a part of said consideration was represented by a mortgage previously existing on the same in favor of a third party and the balance was paid before the conveyance.

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13. On the 25th day of June, 1903, Pedro Aran, a relative of said Luis Aran, obtained from the latter a conveyance of another of the properties included in said deed of Tornabells & Co. for a consideration of $24,800, a part of which was represented by a previous mortgage and the balance to be paid at the rate of $2,000 per year beginning in the year 1909 and ending in the year 1914.

14. Previous to the making of each of the conveyances described in Findings 10, 11, 12 and 13, Luis Aran, or some one in his behalf, went before a Notary and executed a notarial act in which it appeared that the mortgage notes previously executed in favor of Duran, and covering the amount for which the particular parcel of parcels specified might be responsible under said mortgage, had been previously paid by said Aran, and, having been properly cancelled, were produced before the Notary, and in and by the said notarial document the said parcels of property respectively were released from the lien of the mortgage securing such notes. Thereafter, in each of the instances aforesaid, the property therein specified was mortgaged or conveyed free from the lien of the aforesaid mortgage to Duran, and such conveyances and mortgages were, in each and every case, duly recorded in the Registry of Property prior to any record in the Registry of Property of the judgments obtained by complainants herein against Tornabells & Co. referred to in Paragraph 9 herein.

From the foregoing Findings of fact, the court draws the following:

Conclusions of Law.

1. That the proof on behalf of complainants is not sufficient to entitle them to any relief under their bill of complaint.

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2. That there is not now, and never was, any such statute in Porto Rico as the Statute of 13th Elizabeth in England, referring to fraudulent conveyances, because we have the civil law rule here instead of the common law. Every State in the Union has a re-enactment of the Statute of Elizabeth in some form or other among its laws. In the absence of it there is no rule of law preventing a debtor, even when insolvent, for even that does not take from him the power of disposition of his property, and paying his debts with it, or a portion of his debts, and preferring one or more of his creditors with absolute intent to hinder, delay or even to defeat other creditors. If the favored creditor receives no more than is due

him, and permits the debtor to secure no advantage to himself, the transaction will be upheld.

3. That the statute of limitations of one year, as fixed by Article 37 of the Mortgage Law is applicable to suits like the one at bar.

4. That complainants, under the pleadings and proofs herein, are not entitled to subject the properties described in the bill of complaint herein to any lien, interest or decree, by which the complainants would be entitled to have the conveyance and mortgages described in said bill of complaint cancelled and annulled for the benefit of the said complainants.

5. That the bill of complaint should be dismissed.

And during the course of the trial the following questions arose regarding the admission or rejection of certain evidence, which evidence and the rulings of the court thereon were *are* follows:

FREDERICK L. CORNWELL called as a witness in behalf of complainants, after being duly sworn, testified as follows:

120 Direct examination by Mr. PETTINGILL:

Q. Your name, Mr. Cornwell.
A. Frederick L. Cornwell.
Q. Your profession.
A. Attorney at law.
Q. You live in Mayaguez?
A. Since 1899.
Q. Have you practiced here since that time?
A. Yes, sir.
Q. Did you know Joaquín Tornabells in his lifetime?
A. Very well.
Q. And did you know Carlos Doitteau?
A. Very well.
Q. What relations existed between you and that firm?
A. They were one of the very first clients I have ever had in Porto Rico, the house of Tornabells & Company. I think I represented them first in October and November, 1899.
Q. How long did you continue to represent them, more or less?
A. Up to the time that they,—well about sixty days before they made this transfer, the object of contention in this case.
Q. Have you represented them at any time since the bringing of this suit; did you represent them at all between that time and the bringing of this suit, in which you are attorney for complainants?
A. Between what time?
Q. Between the time of this transfer and the bringing of this suit.
A. Yes, I think I represented them in certain capacities. We had certain things pending, which were settled in court.
Q. Did you ever represent them in regard to this transaction?
A. No, no more than that they came to my office to consult me about it and we could not make any arrangements, and that
121 was the cause of my not representing them any more, but I think afterwards I represented them on different occasions. We always retained a friendly feeling.

Q. After the bringing of this suit and its service upon Tornabells & Company, did you have any conversation with Tornabells touching the subject matter of it?

Mr. DEXTER: I desire to interpose an objection to any conversation or any transaction between this witness and Mr. Tornabells, as, by the witness' own testimony, the relation of attorney and client existed. Second. Because Mr. Cornwell, the witness here, is, to all intents and purposes for the object of the rule, the complainant. He is the attorney for the complainant, he stands for the complainant, and, under the statutes of the United States and rules of evidence, cannot be permitted to testify as to a transaction or declaration of a deceased party.

The COURT: As Mr. Cornwell began to testify and as he proceeded, I began to notice a probable trenching on the rule, but assumed that he knew when he was within the rule.

Mr. DEXTER: I desire to ask the witness some questions.

Mr. DEXTER:

Q. At the time of this conversation which you have stated, took place, did Mr. Tornabells know that you were an attorney representing the creditors who had brought this suit against him?

A. Oh! yes, he had been up to confer with me about it two or three times with the object of settlement.

Q. Without stating anything of the nature of this conversation or the matter discussed, about when was it; do you recollect?

A. No, I don't know or recollect the exact date, Mr. Dexter.

122 It was after we had filed our bill against them.

Q. About how long after?

A. It was just before we went down to Ponce from San Juan in the insurance cases.

Q. In 1902 the bill was filed.

A. I was drawing the bill in San Juan. I saw him a week or so after the matter came up, to see if a settlement could be made. The bill had not been filed then. We were over in San Juan trying the gas case when I drew the bill. I don't recollect the exact time. You can rest assured that I won't testify to anything except what took place when Mr. Tornabells knew I was attorney in the matter for the other parties.

Q. You represented certain of these now judgment creditors in the suits on the law side of this court, in which they obtained judgments, did you not?

A. Yes, sir.

Q. You represented Alberto Will & Company?

A. Yes, sir.

Q. You represented Cortada & Company?

A. No.

Q. You represented David Midgley & Sons?

A. Yes, sir.

Q. Who else.

A. I think Ruffer & Sons.

Q. The Caja de Ahorros of Mayaguez?

A. Yes: I want to state also that I was appointed liquidator of that bank and I was acting in a double capacity, not only as counsel but I was liquidator of the institution.

Q. It is a fact that in the case at law of Alberto Will *et al.* against J. Tornabells & Company, you presented to the Court a judgment *pro confesso* in accordance with the understanding or consent given by J. Tornabells & Co.?

123 A. I don't remember. They may have come into court and confessed the debt. I don't remember the steps in the case.

Q. Is it not a fact that Mr. Tornabells and Mr. Doitteau of the firm of J. Tornabells & Company consulted you or your firm almost constantly up to the time of Mr. Tornabell's death?

A. No.

Q. Did you or your firm receive any business from Tornabells and Doitteau or the firm of J. Tornabells & Company after the bringing of this suit?

A. We may have. We still had business of theirs in the office. We possibly wound it up. I am under the impression we wound up that business we had for the firm.

Q. Will you kindly at the first opportunity, produce the books of your office to show us the last fees received from J. Tornabells & Company?

Mr. PETTINGILL: We will admit we did receive fees in particular cases after the bringing of this suit.

A. I had practically done all of Tornabells' business that came before the United States Court up to this very question. Without going into the reasons, when it was presented, I could not represent them any longer and from that time on, although I represented them in particular cases and wound up the business I think in one or two affairs, but the relation of attorney and client did not exist in a general way. They may have come to the office and asked particular questions at the time. Mr. Tornabells fully understood that I did not represent him any more generally as attorney. I don't think I ever represented him generally, except they used to come up to the office, even at this time, but it was only in particular cases.

124 Q. When will you say Mr. Cornwell, that your relation of attorney and client with J. Tornabells and Doitteau ceased to exist?

A. It never wholly ceased to exist.

Q. (Handing witness a paper.) That document, confession of judgment in law case No. 68 of Will & Company, *v.* J. Tornabells & Company, was written in your office was it not?

A. Yes, sir.

Q. Confession of judgment signed by Carlos Doitteau and Joaquin Tornabells?

A. Yes, sir.

Q. Prepared by your direction.

A. Yes, I think Mr. Teillard came into the office.
Q. Whose writing is that on the top of the page?
A. Ben Horton's writing.
Q. One of the firm of Horton & Cornwell?
A. Yes, sir.
Q. What is the date of that document?
A. 17th of October, 1901.
Q. It is a fact, as you say, that you or your firm were the attorneys for Tornabells & Company and Doitteau in all matters in which they were involved in this court?
A. I don't know whether anybody else represented them or not. I am inclined to think that you represented them some.
Q. Here in Mayaguez your firm represented them?
A. We handled cases for them. They had other lawyers. We were not the only attorneys for the house of Tornabells & Company. I think if you will search the files of this office, you will find there is not an attorney in town that did not represent them.
Q. What I am trying to get at is when your relation ceased.
A. I never represented them in this case. When the creditors' bill was filed, they knew I had taken up the claim against them.
125 Q. At the same time you were representing and did afterwards represent Tornabells & Doitteau in other matters, and the records here and in San Juan show that?
A. I may have wound up matters for them and taken particular cases for them.
Q. Don Joaquin Tornabells & Doitteau accepted your judgment in all these matters connected with their affairs, concerning which they consulted you, did they not?
A. I don't think so. I don't think they ever followed my advice in this matter.
Q. They asked your advise did they not?
A. Before this they did ask my advice, but as to this matter I told them I could not advise them. On account of what they said they wanted to do, I told them I could not represent them.
Q. That is all on that point.

Mr. DEXTER: Now with reference to this matter, I think that under the testimony and should there be any doubt,—while it is breaking in on the order of things, I want an opportunity to bring in the records of this court in certain cases, and I think possibly I had better do that before proceeding on this point.
The COURT: I don't believe it is necessary. Mr. Cornwell admits he represented them in other cases.
Mr. PETTINGILL: We have admitted it.
Mr. DEXTER: If it is admitted that in other matters they continued to be the attorneys for these parties, I am willing to proceed upon that. The mere fact that that might be true,—and Mr. Cornwell stating that it is true, makes it true,—does not relieve the witness or his testimony from the logic of the rule. The logic of the rule is the relation.

126 The COURT: I am well aware of the rule. Ask your questions, Judge Pettingill, that I may hear what it is.

Mr. PETTINGILL: I have already asked if at this time this bill has been filed. Now I want to ask this question:

Q. What was that conversation regarding this suit.

The COURT: I will not permit that at this time. I will take time to look at it until after the noon hour and you may recall Mr. Cornwell.

Mr. BOERMAN: I want Your Honor to consider a second ground of objection. That is, that Mr. Cornwell being the attorney of the complainants in this case, I believe he is under the rule of the statute prohibiting him from testifying as to the declaration of a dead person.

Mr. DEXTER: I want to discuss that, Mr. Boerman. I assume that Your Honor will want to take up this other ground of objection also this afternoon. (Reads Sec. 858 of the U. S. Rev. Stats.)

The COURT: We will pass the whole question until 1:30 p. m.

Mr. PETTINGILL: I will examine Mr. Cornwell on one or two other points.

Q. You are acquainted from your connection in the case, in regard to the number of notes given on this mortgage to Duran?

A. Yes, sir; I think it was thirteen. I am not sure.

Q. As to the one which is called No. 5 or the 5th in order of payment.

A. You mean Conrado Palau's note?

Q. I was going to ask you who is the holder of that note?

A. Conrado Palau.

Mr. PETTINGILL: I will raise another question, Your Honor, I presume it will be objected to.

Q. Since the preparations for this trial, have you had any
127 conversation in your office with Inocencia Quevedo, the widow of Tornabells, who is one of the defendants in this suit?

A. Yes.

Q. How did you happen to have that conversation?

A. She came up to the office.

Q. Did you send for her and request her to come?

A. No, she came voluntarily.

Q. Was that conversation regarding the facts of this case?

A. Yes, sir.

Q. What was it?

Mr. DEXTER: That is objected to: First. Because it is by all rules of evidence, hearsay, calling in the statement of another party; and in the next place, she is here to testify herself.

The COURT: Let me ask Judge Pettingill about that.

Mr. PETTINGILL: She is a defendant. Anything that a defendant says in a suit, is an admission. You don't have to impeach them. The object of it is not to bind the other defendants.

Mr. DEXTER: I make the objection that, inasmuch as whatever

this lady may have said, necessarily will affect the other defendants, I invoke the rule of evidence that before her conversation can be given by a third party, she must be put on the stand and examined. It is manifestly unfair to her and it is manifestly unfair to us, that the testimony be brought in by a roundabout way. She may admit it altogether.

The COURT: Why isn't he right on that proposition, Judge Pettingill?

Mr. PETTINGILL: For this reason, if Your Honor please, there is a distinction between a defendant and a witness. Now we had to pursue that course as to Rivera yesterday because he was a
128 witness and not a defendant. But as to a defendant the rule is different. Supposing we called this defendant and she denied it, then we would produce witnesses to prove what she did say.

Mr. BOERMAN: I adopt the objection of Mr. Dexter and make a further objection on the ground that it is not the best evidence and not proper and competent testimony. Besides, this is not a defendant, only a nominal defendant. She is not an original defendant.

The COURT: To the Court, she is a defendant and is so set out in the pleadings. I think as she is a defendant you would have a right to bring her and to call Mr. Cornwell before. And if you showed that she was adverse, you could make that statement to the Court and cross-examine her.

Mr. DEXTER: I assume it is admitted that this conversation took place with her after the death of her husband.

Mr. PETTINGILL: Yes, we admit that.

Mr. DEXTER: I want to object to the testimony for the additional reason that it was a conversation had after the death of Tornabells and comes within Sec. 858 of the U. S. Rev. Stats., and because it is improper under those circumstances.

The COURT: I will overrule that *pro forma* at this time with the right to sustain it later. Save an exception.

(All parties defendant ask to have the same objection and exception noted.)

Mr. PETTINGILL: I want to get on the record that it is not claimed by the complainants that this statement, whatever it may be, made by the widow of Tornabells as a defendant in this case, binds
129 any defendant or is admissible against any defendant except herself and the minor children whom she represents.

Q. About when was this conversation; how long ago?

A. Since I came back from the States; I think I got here the first of December, the first or third.

Q. After that how long?

A. Two or three days after I came back from San Juan. There was no railroad for two or three days.

Q. In the early part of December?

A. Yes, sir; in the early part of December.

Q. State what the conversation was.

Mr. BOERMAN: I ask the Stenographer to note an objection to each and every question.

The COURT: I will enter an order that you may have an objection and exception to every question asked this witness.

Mr. DEXTER: That is what I want.

Mr. BOERMAN: That will be by consent of counsel, then?

Mr. PETTINGILL: Oh! yes.

A. Mrs. Tornabells came up in the office. She was accompanied by a sister of hers. She said she came to me to find out if there was any way we could help her out of her trouble.

Q. How long ago was this?

A. The early part of last December. I was rather surprised to see her there and I asked her if she knew we were the attorneys on the other side and she said she did, but that she was in a very difficult position and she wanted to know if we could not help her. I then called in Mr. Horton and we explained that we were the attorneys on the other side of the case, but she could tell us anything she wanted to. She started in and said that before Joaquin died he owned lots of properties in the name of Luis Aran and Mr. Aran had died and the succession of Aran would not turn her back
130 her property; that she was without a cent now, and she began to enumerate all the properties in this bill which Joaquin owned. I asked her how she knew he owned them. She said he ran them all the time, had majordomos out there and owned them. And she wanted to know if there was some way that she could get something out of it for herself and children. I think it was two children, I don't remember the exact number. She said that they had nothing; she was without anything. That the Arans wouldn't now admit that the property belonged to Joaquin. She wanted to know if there was any way she could get back her property or part of the property and let the rest go to the creditors where it belonged. I told her we could not do anything at that time; that Judge Pettingill was the leading counsel in the case; that I would take the matter up with Judge Pettingill as soon as he returned, he had gone to the States. Then I think she came into the office every other day, crying and saying that this person knew and that person knew about what a great injustice had been done her. She said she didn't have any money left; that she was in a pitiable condition. She wanted to know if we couldn't get her the house she lived in on the playa and I think the house where the sawmill was.

Q. Now pass to the conclusion, Mr. Cornwell, without attempting to give all the details.

A. I told her to wait until Judge Pettingill came. When Judge Pettingill came, we talked this matter over and we sent for her and she came up, and Judge Pettingill told her we would not talk to her unless she brought some business man along with her, because we di-n't want to make any agreement without his presence. That we would try to get the creditors to give her some of the prop-
131 erties or money, but we wanted her to bring some experienced business man before we made any agreement with her. I think she brought up Mr. Sebastian Cabrera.

Q. Passing to the final conclusion.

A. There was some discussion held that afternoon. The conclu-

sion, I think, was reached on some other day and I don't think I was there on the day of the final conclusion. I think you (referring to Mr. Pettingill) and Horton were there.

Q. In this talk did she represent herself alone or anybody else?

A. She represented her two minor children.

Mr. PETTINGILL: That is all.

Cross-examination by Mr. DEXTER:

Q. Is it a fact, Mr. Cornwell, that a contract was made between your firm and this woman to give her either money or property?

A. If it was, it was made afterwards by Judge Pettingill and Mr. Horton.

Q. I am asking you if it was.

A. I don't know: I am out at the mill the most of the time.

Q. You are the leading member of the firm of Horton & Cornwell and you don't know whether such a contract was made?

A. I could not say.

Q. You could not say whether there was a contract made or not?

A. I could not say. I can find out for you. I have been out at the sugar mill all the time.

Q. She went up there quite frequently, you say?

A. Oh! yes, she used to go there frequently. She used to be up there before I got up in the morning.

Q. That is quite unusual, isn't it?

A. No, because I get in from the mill sometimes two or
132 three o'clock in the morning and I don't get up very early.

Q. How many times did she call?

A. Not less than twelve.

Q. Is it a fact that you found her something of a nuisance?

A. No, I couldn't say that.

Q. You never told her that?

A. No, I felt rather sorry for the woman. No, I never told her that.

Q. Why did you want a business man to come with her?

A. There are several reasons for it. This is a case with many ramifications that we didn't want to be connected with and we thought it was a good idea to have a business man there with her.

Q. These ramifications came to your knowledge as attorney for the complainants?

A. No, they are common knowledge.

Q. As attorney for her dead husband, these ramifications did not seem to be explained by his conduct, the fact that you were his attorney?

A. I was not his attorney in any of these things.

Q. Weren't you his attorney for a long period of time?

A. I never was his attorney in these things. I refused to be.

Q. Isn't it a fact that your firm has a contingent contract with the creditors in this case?

A. In the case of Will I think we got $500.00 in advance.

Q. I am asking you now about this present case. I am not speaking about the law cases.

A. I think there is a contract for 25 or 33 1/3 per cent. of the amount recovered. Of the Caja de Ahorros, as liquidator on the old claims I think we get half.

Q. And how about the other complainants, Cortada & Company?

A. I don't know anything about that.

133 Q. You don't know whether any such contract existed?

A. If there is a contract, Judge Pettingill has made it and I don't know about it.

Q. And Midgley & Sons.

A. There I think we got fifty per cent. for getting a judgment in the law case. I don't know whether I told him I would charge a reasonable fee or fifty per cent.

Q. You have not got a contingent fee in that case?

A. I don't remember if I have a contingent fee or reasonable fee. It has been a long time since I have had that correspondence before me.

Mr. DEXTER: That is all.

Cross-examination by Mr. BOERMAN:

Q. You spoke about a note of Palau. Could you tell us about the particulars of it?

A. Have you got that note there?

(The note is produced and marked: Exhibit A, for identification.)

Q. Is it a fact that that note has been endorsed to the American Trading Company?

A. I think it was.

Q. (Showing witness note just identified.) Is this the note?

A. I will look at it and see (After examining the note.) No. I don't think that is the note, Mr. Boerman.

Q. So there were more than one of the notes of Palau as you have stated. I want to know if this is the note you referred to or not.

A. I don't know.

Q. I call your attention to the endorsement w-ere it says: For payment of a debt due by Conrado Palau. That is the reason I call your attention to it and ask whether this is the one you meant or not.

134 A. It is Palau's handwriting there.

Q. I want to know if this is the note you referred to in your testimony.

A. I don't know unless I refer to the records in my office.

Q. Don't you remember by the numbers. That is No. 3.

A. If I remember correctly, the note I referred to is No. 5.

Q. Didn't it have a different endorsement?

A. I couldn't tell but I think it is another one, but I could not tell without referring to the records in the office.

Witness retires.

Mr. DEXTER: The objection goes to the testimony which has just been given.

The COURT: You understood the reservation I made at the time

it was admitted there. I will hear counsel with a view to striking it out.

Court thereupon adjourned for the noon recess.

2/14/1907.

Court reconvened after noon recess at 2 P. M.

Mr. DEXTER: I want to establish the fact that Horton & Cornwell were attorneys of Joaquin Tornabells & Company up to the time of his death.

The COURT: What I want to settle in my mind is whether a client, who had been employing a certain firm for years and then ascertaining that they had retained a case against him and then consulted them knowing that they had the case against him, whether or not, if the attorney chose to come and testify as to what the client and deceased, as it happens here, confided to him, he will be permitted to testify as to what may be in favor of his present client.

Mr. DEXTER: I cannot submit this question without these
135 witnesses, by whom I intend to prove that Horton & Cornwell were the confidential attorneys of J. Tornabells & Company up to his death.

Mr. PETTINGILL: Our position is that it would be entirely immaterial whether that is true. (Citing 11 Wheat. 293 and 138 U. S. 253.)

The COURT: I am going to permit Mr. Cornwell to testify, reserving the right to see what it is, giving all the counsel a right to except.

Mr. DEXTER: I haven't had an opportunity to present my testimony on this matter.

The COURT: Have you got it here?

Mr. DEXTER: I haven't got the witnesses, but I have other evidence.

The COURT: I will hear it at this time.

RICARDO NADAL, called as a witness by defendants in support of their objection to the introduction of the testimony of Mr. Cornwell, the oath being waived, testified as follows:

Examination by Mr. DEXTER:

Q. Mr. Nadal, you are Clerk of this Court, are you not?
A. Yes, sir.
Q. You have been Clerk of this Court for several years?
A. Yes.
Q. I hand you the papers in law case No. 63, of Joaquin Tornabells *et al. vs.* The Municipality of Las Marias and ask you to state who were the attorneys for the plaintiffs in that case.
A. Horton & Cornwell.
Q. When was the declaration filed?
A. The declaration was filed November 15, 1901.
Q. When was the judgment rendered?
A. In that case nothing further was done.
Q. I hand you the papers in common law case No. 57 of J. Tor-

nabells and Carlos Doitteau *v.* Antonio Charneco and ask
136 you who the attorneys were in that case.

A. Horton and Cornwell.

Q. When was the declaration filed?

A. October 7, 1901.

Q. When was the judgment rendered if there was a judgment?

A. It was dismissed by the plaintiffs.

Q. When?

A. December 3, 1901.

Q. I hand you the papers in common law case No. 59 of J. Tornabells and Carlos Doitteau *v.* José Luciano Monsegur and ask you who were the attorneys for the plaintiffs in that case?

A. Horton & Cornwell.

Q. When was that declaration filed?

A. November 6, 1901.

Q. When was the judgment rendered, if any?

A. It was dismissed without prejudice.

Q. When?

A. November 14, 1901.

Q. I hand you the papers in common law case No. 65, of Joaquin Tornabells *et al. v.* Francisco R. Martinez, and ask you who were the attorneys in that case for the plaintiffs?

A. Horton & Cornwell.

Q. When was the declaration filed?

A. November 15, 1901.

Q. And the judgment rendered if any?

A. There was a judgment rendered June 2, 1902.

Q. I hand you the papers in common law case No. 67, of J. Tornabells & Company *v.* Juan Monagas Morales and ask you who were the attorneys for plaintiffs in that case.

A. Horton and Cornwell.

Q. When was that suit filed?

A. It was filed November 16, 1901.

137 Q. Judgment rendered, if any?

A. December 11, 1901, judgment rendered.

The COURT: These are all previous to the filing of the bill in this case?

Mr. DEXTER: In one of them the judgment was rendered the same month.

Q. I hand you the papers in law case No. 68, of Alberto Will *v.* Joaquin Tornabells and Carlos Doitteau, trading as J. Tornabells & Company.

A. That is not a Mayaguez case but I was Clerk at San Juan at the time.

Mr. DEXTER: I now offer in evidence the confession of judgment entered up in common law case No. 68 at San Juan of Alberto Will *v.* J. Tornabells and Carlos Doitteau, under date of October 30, 1901.

The COURT: It doesn't change the Court's mind as to admitting the testimony in the way it intimates. It will let it in.

Mr. DEXTER: I desire to except against that ruling.

The COURT: Give an exception to all counsel that wish it.

Mr. DEXTER: I want my objection to clearly appear: (1) It is incompetent because of the relation of attorney and client; (2) It is incompetent under the United States statute; and (3) Because of the party being dead.

Mr. BOERMAN: I want an exception to every question given.

FREDERICK L. CORNWELL recalled by complainants.

Direct examination by Mr. PETTINGILL:

138 Q. Now, Mr. Cornwell, we will begin chronologically since the whole question is open.

Mr. DEXTER: Does your Honor mean to admit the testimony as to a conversation previous to the transaction?

The COURT: I will bear that in mind.

Mr. PETTINGILL: Perhaps it would be well for me to state what I propose to prove by this testimony. I propose by the testimony in regard to the conversation previous to the transaction of May 2, 1900, to prove a contemplated fraud on the part of these defendants.

Mr. DEXTER: I object to that as incompetent still further.

Q. Mr. Cornwell, did you have a conversation with Mr. Tornabells previous to the date of the transfer of these twenty-six properties from him to Aran on the 2nd day of May, 1900, touching any such proposed transaction?

A. Yes, sir.

Q. State what it was. Who was present?

A. There was present Mr. Joaquin Tornabells, his partner Mr. Carlos Doitteau and Arturo Teillard, the French Vice-consul.

The COURT: How long before the actual transfer was that?

A. I don't know know the exact dates. I should say it was probably thirty days before the transfer, but that is more or less. I don't remember the exact date. They came into my office and Mr. Tornabells I think was the spokesman of the party, although Mr. Teillard was the right hand man of that firm, although he was not a member of it. They explained to me the fact that they went into suspension of payments and they could not pay their debts.

Q. Do you know why the French vice-consul came along with them?

139 A. Doitteau was a Frenchman and he and Teillard were great friends. In fact, in all the business I ever did for them, this man Teillard intervened. They explained their position, that they were in suspension of payments and they could not meet their obligations, and Mr. Tornabells and Mr. Teillard and Mr. Doitteau unfolded a scheme to me. They said one of them,—I don't remember which one—had been down to Aguadilla and had consulted a lawyer down there, who was not practicing at that time. He was a sugar planter, Amel. He owned the Coloso factory at that time. The scheme that they presented was as follows: That they would make a mortgage in favor of Luis Aran,—I don't remember the exact sum they said for, and against that they would issue a certain

number of 'vales hipotecarios,' notes against the mortgages, and they were to be payable to bearer. According to the scheme they presented to me, they were to be payable to bearer. And in that way they would make the sale of all the properties to Aran and Tornabells would get these notes. They had some scheme whereby they would protect Aran. I think Doitteau owed Aran some money and they were actually going to take care of him, and the rest of the notes were to go to Tornabells. They came up to consult me about their scheme, and they wanted to know, if they made such a scheme, if I would represent them, if I would act as their counsel and whether it would stand the test of law and attack in the Federal Court. I told them I could not represent them. They were men who had been very kind to me and I had received money from their house in fees. But I told them the only thing to do was to go into bankruptcy, but that I could not represent them in a matter of that kind and I could not represent them at all. In any business that was straight I would represent them, but that that
140 was crooked. They discussed it there in the office and they asked me some questions. I don't remember the details. After they left, the next I heard of the affair was when it transpired with some different details from what they expressed in the office.

The COURT:

Q. How long a time transpired *n*efore you heard of it again?
A. I couldn't tell you, but it was within two months.

Mr. PETTINGILL:

Q. Now that was the tone of the conversation at that time?
A. Yes.
Q. And you did not know anything further of the matter until the transfer took place?
A. No.
Q. Passing to whatever conversation you had with J. Tornabells, if any, after this suit was filed.
A. After this suit had been filed, I had been appointed liquidator of this savings bank which went into liquidation. The principal creditors of it were Tornabells & Company, Menendez & Company and Schultze & Company, who were bound up in the Tornabells failure and their inability to meet their obligations had caused a suspension of all payments by this little savings bank.
Q. Is it in liquidation yet?
A. It is still in process of liquidation. I think so far it has paid creditors fifteen cents on the dollar. I called Tornabells to the office and said: No matter what you do with your other creditors, you ought to make some arrangement to pay this little savings bank because the most of the money there belonged to servants and artisans. And I told him that whatever else he did he ought to pay this claim. He said: I have got my money matters pretty well mixed up and in notes with Aran, but I will take care of the bank
141 I don't want those poor people to lose their money.

The COURT:

Q. What attorney in this community made this transaction that we are now litigating?

A. I don't know as any attorney ever intervened in it after that, except their statement that they went to see this man Amel at Aguadilla. I don't know of any other attorney they consulted here. The Notary I think was Mariano Palmer who drew that deed.

Mr. PETTINGILL:

Q. You had more than one conversation with Don Joaquin Tornabells?

A. Oh! yes, I used to see Tornabells often.

Q. I mean about this matter.

A. We used to mention it at times.

Q. Did you ever see Doitteau?

A. I used to talk with Doitteau about it. Doitteau was a man I had considerable affection for, and I told him it was a queer kind of business for him to be in. He said he was the junior partner in the firm and was guided by Don Joaquin.

The COURT:

Q. When they came into the office, who did they say they wanted to defraud, or did Tornabells want to keep all his property or to make some creditors preferred?

A. That was the idea. There were one or two of his friends he wanted to protect, but the general idea was to save all his property, although I will say this for Tornabells: He said there in the office that his intention was finally not to defraud any of his creditors, but he hoped finally to pay everybody back.

Q. He simply wanted to possess his property so as to get out of it sufficient to pay his debts?

A. That was possibly what he wanted to do with it.

The COURT: Who was it came into your office with him?

142 A. Mr. Teillard, the French vice-consul, and Mr. Doitteau and Tornabells.

Q. Mr. Aran did not come?

A. No, I saw Aran after that.

Mr. PETTINGILL:

Q. A little more as to Doitteau, as to what he represented in the transaction. You said he was led into it by Tornabells. Did he ever tell you of his own volition, the character of it?

A. He told me the nature of it just as they had there that day. I asked him where the notes were and he told me they were used for collateral purposes, I think to raise money on some of them.

Q. Now about Mr. Aran, did you ever talk to him about the matter?

A. Yes, I saw Mr. Aran.

Q. Was it after this transaction?

A. Yes, it was after the deeds were made.

Mr. BOERMAN: The same objections are to be taken to the testimony as to Aran because he is a deceased person.

The COURT: Note the same objection and the same exception for all the counsel for defendants.

Q. To what extent, if any, have you ever represented Luis Arán?

A. I think I have represented him in about three matters, one in court and two out of court.

The COURT:

Q. Was it all before this transfer to him?

A. That damage suit must have been along about this time. I sued the railroad once for destroying some cane.

Q. What are you going to testify to now?

A. I was talking with Aran and I asked him about this transaction.

Q. Was it in your office?

143 A. It was in my office. He came to shake hands with me. He had just come back from France.

Mr. SWEET: We renew all objections.

A. He said that Carlito, that is what he always called Doitteau,—was a kind of protege of his and he had to do that on his account, but that he would not have done it if he had been here at the time, but that it was all done while he was away.

Q. He had just come back from France?

A. Yes, he simply said that the scheme was made up while he was away.

Q. Was Aran the recipient of this property without being present?

A. As I understand, as far as I think the deed shows, he returned the deed again, although that seems rather queer to me because I think that deed had been delayed some, because I think when the deed was made, he had not returned from France. He said he had no interest at all in the property. He had done it for Carlito. He had no interest in the property whatsoever, except a small sum of money, which Doitteau was owing him.

Q. That he did not keep any of the notes?

A. No sir; he said that he did it purely as a matter of favor, unless he kept one to raise some money that Doitteau actually owed him.

Mr. PETTINGILL: That is all.

Cross-examination by Mr. SWEET:

Q. First, Mr. Cornwell, you have stated that Mr. Tornabells was really the spokesman and the father of this transaction, did you not?

A. Of this scheme, you mean.

Q. Yes.

A. Yes, he did most of the talking there that day, although Teillard was there. Teillard and Doitteau were there. While of course Teillard acted to a great extent as interpreter in addition to

144 adviser.

Q. And afterwards when you talked to Aran he said he did it on account of Carlito?

A. Yes, and friendship for Tornabells.

Q. Now will you answer a little more definitely, Mr. Cornwell, the same question asked by the Court, who was defrauded? What has become of the notes given by Aran for the property?

A. I don't know.

Q. Then you don't know that as a result of that transaction anybody was actually defrauded?

A. I know he has no property and he owes lots of money and cannot pay his debts. He owned twenty-six pieces of property.

Q. If he received the notes for that property and the notes were paid, the money must be some place.

A. I don't think there was any consideration for the notes.

Q. You do not think those notes were ever given or transferred to anybody?

A. There is no question but what the notes were given, but I think they went right back into Tornabells' possession.

Q. Into Tornabells' possession?

A. Of course; Tornabells realized money on lots of these notes.

Q. What did he do with it, pocket it?

A. I suppose so.

Q. Then you do not know that he actually defrauded anybody as a result of that transaction, whether or not the notes were ever paid?

A. I don't know whether they were paid. I know according to the original scheme they were to be issued without any consideration.

Mr. SWEET: I ask that that be stricken out.

145 The COURT: Yes, that can be stricken out.

Q. Isn't it a fact, Mr. Cornwell, and you know of it, that some of these notes are in the possession of third parties now and for valuable consideration, for example of the American Trading Company.

A. I have an idea that they had a complete knowledge of it, every one of them.

Mr. SWEET: I will ask to strike out this answer.

The COURT: The answer will be stricken out.

Q. (Last question was read by the stenographer.)

A. As to the American Trading Company I am not positive. As to the one in the hands of Fritze, Lundt, it would be almost a physical impossibility for Fritze, Lundt not to know of this transaction.

Mr. BOERMAN:

Q. Do I understand you to state as a matter of fact that the firm of Fritze, Lundt was a party to this fraud and have received these notes without consideration and with intent to defraud Tornabells' creditors?

A. Mr. Boerman, I cannot answer your question directly, but I can give you a statement of facts that will make the matter clear. The house of Tornabells continued to run on the Playa in the name of Aran, with both Aran and Tornabells in charge of it.

Mr. SWEET: I object to this. It is an argument to show a fraud-

ulent act of Tornabells & Company and the conspiracy of Fritze, Lundt. Now this is an argument showing that upon which counsel for complainants base their belief.

The COURT: Yes, I will strike it out.

Q. As a matter of fact, is it true or not?

146 A. I will answer you again; I can give you a statement of facts that I know, from which the court can draw its conclusion.

Q. Do you mean, as a matter of fact, that they did or did not do it?

A. If I say so it is a matter of opinion, but I can give you a statement of facts from which the court can draw its conclusion.

Mr. BOERMAN: That is all.

As appears from the above, the court tentatively allowed the foregoing evidence of said witness Cornwell to be admitted, but subsequently upon the consideration of the testimony as a whole and upon making its findings of fact and law and rendering its decision herein the Court did determine and rule that defendants' objections to the testimony of said witness Cornwell in so far as the same related to conversations between said witness and Joaquin Tornabells, Carlos Doitteau or Luis Aran should be sustained and said testimony excluded, because the plan outlined by said Tornabells during said conversation did not constitute a fraud upon creditors under the laws of Porto Rico at that time in force, hence the privilege existing as to confidential communications between attorney and client was applicable thereto, and further because such testimony involved admissions of a dead man against the interest of his own heirs who are parties to the suit.

And the Court did further determine and rule that defendants' objection to the testimony of said witness Cornwell in so far as the same related to conversations between said witness and Inocencia Quevedo, the widow of Tornabells, should be sustained and said testimony excluded because it was the statement of a third party intended to impugn after the fact the *bona fides* of a transfer, the parties to which were dead at the time such testimony was offered and was at best hearsay as said widow of Tornabells was still

147 alive within the jurisdiction of the court and subject to be called as a witness if her testimony regarding such transaction would be admissible.

To which decisions and ruling of the Court, rejecting and excluding the testimony aforesaid, the complainants by their counsel did then and there except.

And the foregoing statement of facts and legal conclusions as well as the transcript of the aforesaid testimony offered and rejected is hereby certified to the Supreme Court of the United States according to law for the purposes of complainants' appeal herein.

B. S. RODEY,
Judge U. S. District Court for Porto Rico.

12/19/07.

148 *Petition of Appeal.*

(Filed June 29, 1907).

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Creditor's Bill.

To the Honorable Bernard S. Rodey, Judge of the court aforesaid and presiding therein:

The Complainants in the above entitled cause, Alberto Will, doing business in the city of Havana, Cuba, under the name of Will & Company, Frederick Midgley, Alfred Midgley and Lewis Midgley, doing business in the city of Manchester, England, under the firm name of David Midgley & Sons, Guillermo Cortada Ramón Cort-da and Fernando Toro, doing business in the city of Ponce, Porto Rico, under the firm name of Ramon Cortada & Company, L. W. Armstrong and P. Armstrong, doing business in the City and State of New York, under the firm name of L. W. & P. Armstrong, A. Ruffer, Henery Ruffer and Charles Ruffer, doing business in the city of London, England, under the firm name of A. Ruffer & Sons, and the Caja de Ahorros de Mayaguez, a corporation, conceiving themselves aggrieved by the order and decree made and entered by this Court in the above entitled cause under date of this day, the 29th day of June, A. D. 1907, wherein and whereby, among other things, it was and is ordered and directed that the bill of complaint, with its amended and supplemental bills, be finally dismissed, do hereby appeal from said final order and decree to the Supreme Court of the United States for the reasons to be set forth in an assignment of errors to be filed herein; and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings and findings upon which said final decree
149 was based, duly authenticated, may be sent to said Supreme Court of the United States.

Dated at San Juan this 29th day of June, 1907.

HORTON & CORNWELL,
N. B. K. PETTINGILL,
Solicitors for Complainants, Appellants.

Journal Entry, June 29, 1907.

In Equity.

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Order.

On motion of N. B. K. Pettingill, Esq., one of the solicitors of counsel for the complainants, it is ordered that an appeal to the Supreme Court of the United States from the final decree this day filed and entered herein be, and the same hereby is, allowed; and that a certified transcript of the record, findings, certificate of rulings upon admission of evidence, and all proceedings herein be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Two Hundred and Fifty Dolars ($250).

Whereupon said Solicitor for the complainants presents to the Court an appeal bond which is duly approved by the Court.

150 *Appeal Bond.*

Know all men by these presents, that we, N. B. K. Pettingill, as attorney for Alberto Will & Company, David Midgly & Sons, Ramon Cortada & Company, L. W. & P. Armstrong, A. Ruffer & Sons and Caja de Ahorres de Mayaguez, as principal, and Paul A. English and R. H. Todd as sureties, are held and firmly *and firmly* bound unto the Clerk of the District Court of the United States for Porto Rico, for the use and benefit of whom it may concern, in the full and just sum of Two Hundred and Fifty Dollars ($250) to be paid to said Clerk of said Court, or his successors in office, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and daed this 29th day of June 1907.

Whereas lately at a session of said District Court of the United States for Porto Rico in a suit pending between the above named parties, Alberto Will & Company *et al.*, as complainants, and J. Tornabells & Company *et al.*, as defendants, the same being No. 154 of the Docket of said Court at San Juan, the said complainants having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit which appeal has been allowed and entered in open court during a stated Term of the sane;

Now, the condition of the above obligation is such that if the said Alberto Will & Company, David Midgley & Sons, Ramón Cortada & Company, L. W. & P. Armstong, A. Ruffer & Sons, and the Caja

de Ahorres de Mayaguez shall prosecute their said appeal to effect, and shall answer for all costs that may be awarded against them, if they fail to make their plea good, then the above obligation
151 is to be void, otherwise to remain in full force and virtue.

N. B. K. PETTINGILL. [L. S.]
PAUL A. ENGLISH. [L. S.]
R. H. TODD. [L. S.]

Taken and approved by me this 29th day of June, 1907.
B. S. RODEY, *Judge.*

152 *Assignment of Errors.*

(Filed January 3, 1908)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Come now the complainants, now appellants, by their solicitors, Horton & Cornwell and N. B. K. Pettingill, and assign the following as errors committed by the court below during the progress of said cause:

First, the court erred in finding as matter of law that in Porto Rico there was no rule of law preventing a debtor, even though insolvent, from preferring one creditor over others with absolute intent to hinder, delay or even defeat the just claims of said others.

Second, the court erred in finding as matter of law, from the facts found, that the above rule of law was applicable and in not finding as matter of law that the applicable rule was that a debtor could not transfer his property without any consideration for the purpose of delaying or defeating the just claims of his creditors.

Third, the court erred in finding as matter of law that the statute of limitations or prescription, as fixed by Art. 37 of the Mortgage Law of Porto Rico, barred the appellants from relief.

Fourth, the court erred in ruling as inadmissible and excluding from its consideration the testimony of F. L. Cornwell, a witness for complainants, containing the conversation had by said witness with Joaquin Tornabells, one of the original defendants, shortly prior to the time of, and referring to the subject of, the conveyances
153 alleged to be fraudulent by complainants' bill of complaint.

Fifth, the court erred in ruling as inadmissible and excluding from its consideration that part of the testimony of said witness Cornwell for the complainants which contained the conversation had by said witness with Carlos Doitteau, one of the original defendants, after the making of the conveyances alleged to be fraudulent by complainants' bill, upon the subject of their fraudulent character.

Sixth, the court erred in ruling as inadmissible and excluding from its consideration that part of the testimony of said witness Cornwell for the complainants which contained the conversation had by

said witness with Inocencia Quevedo, widow of said Tornabells and a party to said suit at the time such conversation was had.

Seventh, the court erred in dismissing complainants' bill of complaint instead of granting the prayer of their bill.

Wherefore these complainants and appellants pray the honorable, the Supreme Court of the United States, to examine and correct the errors assigned, and for the reversal of the final decree of said United States District Court of Porto Rico entered in the above entitled cause.

HORTON & CORNWELL.
N. B. K. PETTINGILL
Counsel for Complainants-Appellants.

154 *Præcipe for Transcript of Record.*

(Filed December 5, 1907.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

Appeal to Supreme Court.

To Messrs. Dexter and Sweet, Solicitors of record for principal defendants:

You will please take notice that I have filed with the Clerk of the Court aforesaid a præcipe for the making of the Transcript of Record on appeal to the Supreme Court, a copy of which is hereto attached and another delivered to you.

If you desire any other parts of the record in this court transmitted in said Transcript, please indicate by præcipe to the Clerk such parts as you desire, in the absence of which indication it will be considered that the parts included in the attached directions are satisfactory.

San Juan, December 4, 1907.

HORTON & CORNWELL,
N. B. K. PETTINGILL,
Counsel for Complainants and Appellants.

Service of above notice accepted with copy, this 5th day of December, 1907.

F. H. DEXTER,
Of Counsel for Def'ts.

No. 154. Equity.

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

The Clerk of the Court aforesaid will please prepare a Transcript of Record on the appeal taken by complainants to the Supreme Court

of the United States, and in such Transcript will include the following pleadings and proceedings, to wit:

155 1. The original bill of complaint, filed on June 23, 1902, with the exhibit thereto.

2. Original answers of J. Tornabells & Co. Luis Aran, Juan Coll and Alfredo Saliva, filed on October 6, 1902.

3. Entry in Order Book concerning replications, dated October 22, 1904.

4. Petition of L. W. & P. Armstrong, filed Oct. 31, 1904.

5. Order allowing same, filed Dec. 12, 1904.

6. Bill of revivor as to heirs of Tornabells, filed June 12, 1905.

7. Answer of heirs of Tornabells, filed October 2, 1905.

8. Suggestion of death of Luis Aran and appearance for heirs, dated August 6, 1906.

9. Amended answer of Francisca Aran, administratrix of estate of Luis Aran, filed September 4, 1906.

10. Amended answer of J. Tornabells & Co.,, signed by Doitteau and the widow of Tornabells, filed September 5, 1906.

11. Bill of revivor as to heirs of C. Doitteau, Jan. 24, 1907.

12. Order allowing amendment of answer of Francisca Aran, as administratrix etc. filed February 2, 1907.

13. Journal entry February 11, 1907, showing appointment of F. H. Dexter, Esq., as guardian *ad litem* for heirs of Doitteau.

14. All minute entries of February 12, 1907, except those referring to petition of Ciprian Rivera.

15. All journal entries of February 14, 1907, as amended by the entry of June 3rd following.

16. All journal entries of February 15, 1907.

17. Opinion of the court, upon the merits of the case.

18. Final Decree.

19. Certificate of Judge containing Findings of Fact, Conclusions of Law and Rulings in the exclusion of evidence.

156 20. Petition of appeal, showing it to have been taken in open court.

21. Allowance of Appeal, showing the same.

22. Appeal Bond.

23. Assignment of Errors.

24. Direction to Clerk for Preparation of Transcript.

25. Any like direction which may be filed by appellees.

HORTON & CORNWELL,
N. B. K. PETTINGILL,
Sol's for Compl'ts.

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157 *Præcipe of Def't F. Aran for Additional Parts of Record Included in Transcript on Appeal.*

(Filed Dec. 9, 1907.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & COMPANY.

To the clerk of the above court:

In response to a notice heretofore received by the undersigned solicitors, for defendant, Francisca Aran, Administratrix of the estate of Luis Aran, advising us that the solicitors for complainants had filed in this Court a præcipe for the making of the transcript of the record on appeal, we hereby indicate by means of this præcipe, additional parts of record which we desire shall be included in the said transcript.

(1) Demurrer filed to the bill of complaint of Armstrong & Company.

(2) Copy of the record showing the overruling of the same.

(3) All amended answers filed by Francisca Aran, Administratrix, or by Inocencia, widow of Tornabells.

(4) Motions of Fritze, Lundt & Company, and Banco de Soller, to vacate the order appointing receiver.

(5) Order of the Court, of September 27th, 1906, overruling said motions.

(6) Withdrawal of Francis H. Dexter as solicitor for the widow and heirs of Tornabells, December 30th, 1906.

(7) Answers of defendants, American Trading Company, Banco de Soller, Fritze, Lundt & Company, and Surriñauch, to the original bill of complaint or to supplemental bill of complaint.

F. H. DEXTER,
Solicitor for Defendant Francisca Aran.

158 *Additional Præcipe as to Transcript.*

(Filed December 18, 1907.)

ALBERTO WILL ET AL.
vs.
J. TORNABELLS & CO. ET AL.

To the clerk of the court aforesaid:

Having been served with a copy of the Præcipe filed on the — day of December, 1907, by counsel for defendant Francisca Aran, Administratrix, etc., requesting the inclusion in the Transcript of Record of seven additional parts specified, you are hereby directed to include in said Transcript those papers specified in the part numbered (3) in said Præcipe, but to exclude all other parts specified

therein—for the reasons that the parts of said record so directed to be excluded are not material to any of the matters upon which the court decided said cause, nor to any question which complainants and appellants desire to bring before the Supreme Court of the United States for review.

But you are directed to insert in said Transcript a copy of said Præcipe and of this denial of said request, in order that any question as to the sufficiency of said Transcript may be intelligently passed upon by said Supreme Court.

N. B. K. PETTINGILL,
Of Counsel for Complainants-Appellants.

159 District Court of the United States for Porto Rico.

ALBERTO WILL & CO. ET AL.
vs.
J. TORNABELLS & CO. ET AL.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing one hundred and fifty-eight typewritten pages, numbered from 1 to 158 inclusive, to be a full, true and correct copy of the record and proceedings of the above and therein entitled cause requested in the præcipes of complainants, copies of which are included in this transcript, as the same remain of record and on file in the Office of the Clerk of said Court.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States for Porto Rico, at San Juan, P. R., this 11th day of January, A. D. 1908.

[Seal U. S. District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk of the District Court of the United States for Porto Rico.

Endorsed on cover: File No. 20,994. Porto Rico. D. C. U. S. Term No. 261. Alberto Will, doing business under the name of Will & Company, Frederick Midgley, Alfred Midgley, and Lewis Midgley, doing business under the firm-name of David Midgley & Sons, *et al.*, appellants, *vs.* Joaquin Tornabells, doing business under the firm-name of J. Tornabells & Company, *et al.* Filed January 28th, 1908. File No. 20,994.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 63.

ALBERTO WILL ET AL., APPELLANTS,

vs.

J. TORNABELLS & CO. ET AL., APPELLEES.

STATEMENT.

This was a suit in equity brought in the District Court of the United States for Porto Rico—a court created by section 34 of the act of Congress of April 12, 1900—in the form of a creditors' bill, wherein the bill of complaint was filed on June 23, 1902, by some of the parties now appellants (others having subsequently joined) against the members of the commercial firm of J. Tornabells & Company, whose place of business had been in the city of Mayaguez, Porto Rico, within said district, and certain other defendants as holders of, or interested in, the property which was alleged to have been fraudulently conveyed by said defendant firm. No question of the jurisdiction of the court below was raised or involved, as all the defendants were alleged to be aliens and the property involved worth many thousands of dollars (act of Congress of March 2, 1901, sec. 3).

In this brief the appellants, who were complainants below, will be referred to as the complainants, and the appellees will be referred to as defendants; while references to the pages of the record will indicate the printed pages.

The following was the substance of the allegations contained in the bill of complaint:

That before the year 1900 the defendant firm of Tornabells & Co. were indebted to each of the complainant firms in the sums represented by their several subsequent judgments, all recovered on the law side of the same court; that the dates and amounts of said respective judgments, including costs, were as follows: Will & Co., April 22, 1902, for $12,492.72; Midgeley & Sons, April 22, 1902, for $4,714.80, and Cortada & Co., January 21, 1902, for $3,431.77; and that execution had been issued upon each of said judgments and returned *nulla bona* by the marshal of said court.

That at the time of the creation of said indebtedness said firm of Tornabells & Co. owned a large amount of valuable real estate, of which they continued to own twenty-six tracts or parcels until the 2d day of May, 1900, on which day the firm executed a deed of conveyance of said twenty-six parcels to their co-defendant, Luis Aran, whereby they pretended to convey the same to him for a consideration of 167,700 pesos, provincial money (act of Congress of April 12, 1900, sec. 11); that the value of said property was more than $100,000 American gold, a description thereof being attached to the bill of complaint as an exhibit; and that said conveyance recited that of the above consideration 30,000 pesos were paid in cash and the balance was to be paid in ten yearly instalments, at the rate of 13,700 pesos per year.

That nine days after the above conveyance, that is, on May 11, 1900, defendant Luis Aran executed a mortgage upon all the valuable portion of said property, whereby fourteen of said parcels were mortgaged to defendant Baudelio Duran, to secure a pretended debt of 130,000 pesos, and five parcels were mortgaged to defendant firm of Duran &

Coll, of which the same Baudelio Duran was senior partner, to secure a pretended debt of 20,000 pesos; and that thereafter said firm of Duran & Coll remortgaged *their* said mortgage to secure a pretended debt of 6,000 pesos to defendant Valdecilla.

That at about the same time as the sale of the twenty-six parcels of land to Aran said firm of Tornabells & Co. also pretended to sell and transfer to said Aran their mercantile business in said city of Mayaguez with the large stock of merchandise belonging thereto, and said business had since been carried on in the name of said Aran, but that the members of the firm of Tornabells & Co. continued in the active control of said business, while Aran had never taken any active part in the management thereof, but had been most of the time absent from Porto Rico.

That on the 13th day of September, 1901, defendant firm of Tornabells & Co. executed a further notarial instrument, whereby it pretended to acknowledge receipt from defendant Aran of said balance of 137,700 pesos of the alleged purchase price, which was, according to the original agreement and deed, to have been paid in ten annual instalments.

That, at the time of said transfers of the real estate and personal property aforesaid by Tornabells & Co. to Aran, said firm was largely indebted, was insolvent and in suspension of payments—a condition provided for by the then laws of Porto Rico; that each and all of said transfers and subsequent liens were simulated and fraudulent and made for the purpose of hindering, delaying and defrauding the complainants and other creditors, with exception of the mortgage to Valdecilla; and that, as to that mortgage, complainants were uninformed as to its real consideration, but however that may have been, said Valdecilla had knowledge of the fraud in the title of his grantors, wherefore his rights should be postponed to those of the complainants.

The bill closed with a prayer for a receiver and for the usual relief of having the several conveyances and mortgages

described declared to be fraudulent as to creditors and the said property decreed to be subject to the lien of complainants' judgments and, if the same were not thereupon paid, of having said property sold for the payment thereof, and for general relief (Record, pages 1-6).

The several defendants filed their answers on the rule day of the court in October, 1902 (Tornabells & Co., pages 12-15; Aran, 16-20; Duran & Coll, 20, 21; Saliva, 22). These answers, generally speaking, deny the allegations of the bill, with some attempt at explanation of the various transactions, but, as most of them were later superseded by amended answers, it is not necessary to state them in detail, and whatever reference to their allegations may be advisable will be made in the argument.

After much time consumed in exceptions to answers and other proceedings not contained in the record and not material for the court to consider, a general replication was filed in October, 1904, and a few days later the firm of L. W. & P. Armstrong, of New York, filed their intervening petition praying to be allowed to join as complainants, and alleging that said firm of Tornabells & Co. had been indebted to them since the month of July, 1898, in the sum of $8,473.54, as was admitted by a letter dated December 8, 1899, and attached to their petition. The prayer of this petition was granted without objection by an order of December 12, 1904 (page 27).

On June 12, 1905, complainants suggested the death of Joaquin Tornabells, the senior member of the firm of Tornabells & Co., and filed their bill of revivor against the heirs, and on the following rule day the heirs answered (pages 27-29). This answer merely adopts for their benefit the answer already filed on behalf of their ancestor. On August 6, 1906, the death of defendant Aran was suggested, an order of revivor made, and time given for the filing of amended answers (page 29). In accordance with this permission amended answers were filed by the representative of Aran,

deceased (pages 29-34), and by those of Tornabells (pages 34-38). In January, 1907, the death of Doitteau, the remaining member of the firm of Tornabells & Co., was suggested and revivor prayed (page 39). On February 2, 1907, the answer of Aran was again allowed to be amended (pages 40-43). On February 11, 1907, Attorney Dexter was appointed guardian *ad litem* for the minor heirs of Doitteau, deceased, and on the following day Attorney Mestre was named in a like capacity for the minor heirs of Tornabells (pages 43, 44).

The cause was tried on its merits at Mayaguez from February 12th to the 15th, 1907, and the court held the same under advisement from that time until June 22d following, on which day the judge rendered a long written opinion (pages 47-66), finding all the issues (as well as some things not in issue) in favor of the defendants and directing a decree to be entered dismissing complainants' bill, which was accordingly done by decree dated June 29, 1907 (page 66). On the same day, and in open court, an appeal to this court was taken and perfected by the complainants (pages 87-89). Thereafter findings of fact and conclusions of law, as well as certain rulings upon the admission or exclusion of evidence offered by complainants, were certified by the court for the purposes of the appeal (pages 67-86), in accordance with the act of Congress of April 7, 1874.

The conclusions of law arrived at by the court are vital to this appeal, in connection with certain evidence offered and excluded, and seem to us wholly at variance with the findings of fact and the well-settled law applicable thereto, and, as they are short, we wish to reproduce them here in advance of the insertion of the assignment of errors. These conclusions were as follows (page 69):

> 1. That the proof on behalf of complainants is not sufficient to entitle them to any relief under their bill of complaint.
>
> 2. That there is not now, and never was, any such statute in Porto Rico as the statute of 13th Elizabeth

in England, referring to fraudulent conveyances, because we have the civil-law rule here instead of the common law. Every State in the Union has a reenactment of the Statute of Elizabeth in some form or other among its laws. In the absence of it there is no rule of law preventing a debtor, even when insolvent, for even that does not take from him the power of disposition of his property, from doing about what he pleases with his property and paying his debts with it, or a portion of his debts, and preferring one or more of his creditors with absolute intent to hinder, delay, or even to defeat other creditors. If the favored creditor receives no more than is due him, and permits the debtor to secure no advantage to himself, the transaction will be upheld.

3. That the statute of limitations of one year, as fixed by article 37 of the Mortgage Law, is applicable to suits like the one at bar.

4. That complainants, under the pleadings and proofs herein, are not entitled to subject the properties described in the bill of complaint herein to any lien, interest, or decree by which the complainants would be entitled to have the conveyance and mortgages described in said bill of complaint cancelled and annulled for the benefit of the said complainants.

5. That the bill of complaint should be dismissed.

The errors assigned by the complainants upon this appeal are as follows, modified from page 89 of the record:

First. The court erred in finding as matter of law that in Porto Rico there was no rule of law preventing a debtor, even though insolvent, from preferring one creditor over others with absolute intent to hinder, delay, or even defeat the just claims of said others.

Second. The court erred in finding as matter of law, from the facts found, that the above rule of law was applicable, and in not finding as matter of law that the applicable rule was that a debtor could not transfer his property without any consideration for the purpose of delaying or defeating the just claims of his creditors.

Third. The court erred in finding as matter of law

that the statute of limitations or prescription, as fixed by article 37 of the Mortgage Law of Porto Rico, barred the appellants from relief.

Fourth. The court erred in ruling as inadmissible and excluding from its consideration the testimony of F. L. Cornwell, a witness for complainants, containing the conversation had by said witness with Joaquin Tornabells, one of the original defendants, shortly prior to the time of, and referring to the subject of, the conveyances alleged to be fraudulent by complainants' bill of complaint, which was as follows:

They explained their position, that they were in suspension of payments and they could not meet their obligations, and Mr. Tornabells and Mr. Teillard and Mr. Doitteau unfolded a scheme to me. They said one of them,—I don't remember which one—had been down to Aguadilla and had consulted a lawyer down there, who was not practicing at that time. He was a sugar planter, Amel. He owned the Coloso factory at that time. The scheme that they presented was as follows: That they would make a mortgage in favor of Luis Aran,—I don't remember the exact sum they said for, and against that they would issue a certain number of "vales hipotecarios," notes against the mortgages, and they were to be payable to bearer. According to the scheme they presented to me, they were to be payable to bearer. And in that way they would make the sale of all the properties to Aran, and Tornabells would get these notes. They had some scheme whereby they would protect Aran. I think Doitteau owed Aran some money and they were actually going to take care of him, and the rest of the notes were to go to Tornabells. They came up to consult me about their scheme, and they wanted to know, if they made such a scheme, if I would represent them, if I would act as their counsel and whether it would stand the test of law and attack in the Federal Court. I told them I could not represent them. They were men who had been very kind to me and I had received money from their house in fees. But I told them the only thing to do was to go into bankruptcy, but that I could not represent them in a matter of that kind and I could not

represent them at all. In any business that was straight I would represent them, but that that was crooked. They discussed it there in the office and they asked me some questions. I don't remember the details. After they left, the next I heard of the affair was when it transpired with some different details from what they expressed in the office.

Fifth. **The court erred in ruling as inadmissible and excluding from its consideration that part of the testimony of said witness Cornwell for the complainants which contained the conversation had by said witness with Carlos Doitteau, one of the original defendants, after the making of the conveyances alleged to be fraudulent by complainants' bill, upon the subject of their fraudulent character, which was as follows:**

"I used to talk with Doitteau about it. Doitteau was a man I had considerable affection for, and I told him it was a queer kind of business for him to be in. He said he was the junior partner in the firm and was guided by Don Joaquin (Tornabells). * * *

"He told me the nature of it just as they had there that day. I asked him where the notes were and he told me they were used for collateral purposes, I think to raise money on some of them."

Sixth. **The court erred in ruling as inadmissible and excluding from its consideration that part of the testimony of said witness Cornwell for the complainants which contained the conversation had by said witness with Inocencia Quevedo, widow of said Tornabells, and a party to said suit at the time such conversation was had, which was as follows:**

I then called in Mr. Horton (his then partner) and we explained that we were the attorneys on the other side of the case, but she could tell us anything she wanted to. She started in and said that before Joaquin died he owned lots of properties in the name of Luis Aran, and Mr. Aran had died and the succession of Aran would not turn her back her property, that she was without a cent now; and she began to enumerate all the properties in this bill which Joaquin owned. I asked her how she knew he owned them. She said he ran them all the time, had

majordomos out there and owned them. And she wanted to know if there was some way that she could get something out of it for herself and children. I think it was two children, I don't remember the exact number. She said that they had nothing; she was without anything; that the Arans wouldn't now admit that the property belonged to Joaquin. She wanted to know if there was any way she could get back her property or part of the property and let the rest go to the creditors where it belonged.

Seventh. The court erred in dismissing complainants' bill of complaint instead of granting the prayer of their bill.

For the purpose of sustaining the foregoing assignment of errors we now proceed with the

ARGUMENT.

Point I.

The laws of Porto Rico not only forbade conveyances in fraud of creditors, but held those making the same guilty of a crime.

The assignments numbered one and two may be considered together under this head.

The conclusion of law upon which they are based, which is the conclusion numbered 2, is so remarkable, in view of the plain provisions of various statutes of Porto Rico and of the body of legal decisions thereon in the courts of both Porto Rico and Spain, that some explanation is necessary to enable the court to comprehend how counsel could permit such statutes and decisions to be ignored, and to acquit of blame the lawyers appearing as counsel in the cause—those representing the complainants of negligence in not citing the same to the court, and those representing defendants of actively or passively abetting its ignorance. The explanation

is, as may be inferred from the record of the case, that the point so decided was entirely foreign to the contentions of counsel for defendants. Counsel for complainants regarded the rules applicable to fraudulent conveyances under the Spanish and Porto Rican laws as so nearly identical with those generally prevailing in the American law for the purposes of the present case as to require only passing comment, while the respective counsel for the several defendants, with one exception, coincided with this view, rested their defense upon the denial of all fraud and the statute of limitations, and submitted their case upon that defense. It must, therefore, have been as much a surprise to counsel for defendants as to ourselves when the opinion of the court advanced as one of the principal bases of its conclusion the novel proposition that there was at that time no law preventing fraudulent conveyances in Porto Rico. We will now attempt to show the extent of that error.

As the conveyance in question took place, as alleged, in the year 1900, we must turn our attention to the laws then in force, and not to the Revised Code adopted in the year 1902. The general law at that time fixing civil rights as between parties was what is now known as the "Old Civil Code," which had been put in force by the Spanish government in the year 1889, and was continued in force by the military orders during the period of transition and again by the act of Congress of April 12, 1900, section 8, except as it had been modified by said military orders (Stats. at Large, vol. 31, page 79); and in this "Old Civil Code" (War Department translation, 1899), we find the following article, under the general head of "Contracts," referring to the subject in question:

> ART. 1101. Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnify for the losses and damages caused thereby.

ART. 1102. Liability arising from fraud is demandable in all obligations. The renunciation of the action to enforce it is void.

* * * * * * *

ART. 1275. Contracts without a consideration or with an illicit one have no effect whatsoever. A consideration is illicit when it is contrary to law and good morals.

ART. 1276. The statement of a false consideration in contracts shall render them void, unless it be proven that they were based on another real and illicit one.

* * * * * * *

ART. 1280. The following must appear in a public instrument:

1. Acts and contracts the object of which is the creation, transmission, modification, or extinction of property rights in real property.

* * * * * * *

6. The assignment of actions or rights arising from an act contained in a public instrument.

All other contracts, in which the amount of the prestations of one of the two contracting parties exceeds 1,500 pesetas, must be reduced to writing, even though it be private.

* * * * * * *

ART. 1290. Contracts validly executed may be rescinded in the cases established by law.

ART. 1291. The following may be rescinded:

* * * * * * *

3. Those executed in fraud of creditors, when the latter cannot recover, in any other manner, what is due them.

4. Contracts relating to things in litigation should they have been executed by the defendant without the knowledge and approval of the parties in litigation or of the competent judicial authority.

5. Any other contracts specially determined by law.

ART. 1292. Payments made, while in a state of

insolvency, by a debtor on account of obligations which, at the time of making, the debtor could not be compelled to fulfill, may also be rescinded.

* * * * * * *

ART. 1295. Rescission obliges the return of the things which were the objects of the contracts, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who have not acted in bad faith.

* * * * * * *

ART. 1297. Contracts by virtue of which the debtor alienates property, for a good consideration, are presumed to be executed in fraud of creditors.

Alienations for valuable considerations, made by persons against whom a condemnatory judgment, in any instance, has been previously rendered, or a writ of seizure of property has been issued, shall also be presumed fraudulent.

ART. 1298. Any person who may have acquired in bad faith things alienated in fraud of creditors must indemnify the latter for the losses and damages caused to them by the alienation whenever, for any reason whatsoever, it should be impossible for him to return them.

ART. 1299. The action asking rescission must be brought within four years.

It is thus seen that,while there was no one act or law like the Statute of Frauds devoted exclusively to that subject, the various provisions above quoted answered a similar purpose—some of the provisions of the English statute, like the performance within one year, being absent, while other provisions, like the limit in amount to 1,500 pesetas, are unknown to the former; but we still contend that in regard to

conveyances in fraud of creditors the provisions are practically identical in effect with the recognized American law.

In order that the provisions affecting parties other than the fraudulent grantor might also be effective as against such conveyances when recorded, the same principle was incorporated in the mortgage law, which was also in force at the time referred to, as may be seen from the following articles, also copied from the War Department translation of that law:

> ART. 36. Suits for rescission or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law.
>
> ART. 37. Exceptions to the rule contained in the preceding article are:
>
> * * * * * * *
>
> 2. Suits for rescission of conveyances made for the purpose of defrauding creditors in the following cases:
>
> When the second conveyance has been made without consideration.
>
> When the third person was a party to the fraud.
>
> In both cases the third person shall not be prejudiced by any action for rescission not brought within one year from the time of the fraudulent conveyance.
>
> * * * * * * *
>
> ART. 39. By a conveyance without consideration to defraud creditors in case 1, No. 2 of article 37, shall be undertsood not only the one by gift or cession of a right, but also any conveyance, creation or renunciation which the debtor makes of some property right within the periods respectively mentioned in the common or in the proper commercial laws, for the rescission of conveyances made to defraud creditors, provided there was no price or its equivalent, or any preexisting obligation which had fallen due.
>
> ART. 40. In accordance with the provisions of the preceding article, and providing the circumstances mentioned exist, the following may be revoked:
>
> * * * * * * *
>
> 3. Conveyances of real property for the payment of debts which have not yet fallen due.

4. Voluntary mortgages created for the security of debts previously contracted without this guaranty, and which have not yet fallen due, provided the conditions of the principal obligation are not thereby encumbered.

5. Any contract by which the debtor transfers or renounces expressly or impliedly any property right.

It shall be understood that no price or its equivalent figures in said contracts, when the notary does not certify as to its delivery, or if the contracting parties acknowledge that the delivery had previously taken place and the fact is not proven or it is shown that it must be embraced in case No. 3 of this article.

ART. 41. The owner of the realty or of the property right shall be considered a party to the fraudulent conveyance in the second case, No. 2 of Art. 37:

1. When it is proven that he knew the purpose of making said conveyance, and that he was a party to it in the character of last owner or in any other capacity.

2. When he acquired his interest, either directly from the debtor or from a subsequent purchaser, for half or less than half its true value.

3. When any kind of false statement or subterfuge has been employed in the contract executed by the debtor, and it is proven that the owner had notice or took advantage thereof.

Here again is the similarity in principle to the American law shown, differing mainly in not leaving the deduction of fraud to the probative force of circumstances in a general way, but attempting to lay down specific rules and limitations therefor.

The foregoing provisions were considered sufficient up to the time of the change of sovereignty, partly because, as shown by the preamble of the military order we are about to quote, such conveyances were further discouraged by the heavy royal imposts placed upon all conveyances, and partly because, previous to American occupation, transfers of property of any considerable value were comparatively infrequent. But after these imposts were abolished by the American

military government debtors soon discovered that the making of fraudulent conveyances was a cheap and, in many cases, practicable scheme for avoiding their debts, as the uncovering of the frauds was made difficult by the strong *prima facie* presumption (by some local courts held conclusive) of good faith and valuable consideration, if that consideration were stated by the notary to be actually passed in money in his presence, though it might be passed back behind the door.

Hence the growing prevalence of this making of fraudulent conveyances was drawn to the attention of the Secretary of Justice during the military governorship of Major General Guy V. Henry, and led to the following recommendation and order of that Secretary, which, upon its approval by said military governor and publication in the Official Gazette, became a law on the 20th day of March, 1899:

To the Major General Commanding the Department.

SIR: The complaint made by the "Crédito y Ahorro Ponceño" (Savings Bank of Ponce) is perfectly justified.

Since the repeal in this island of the tax laid on conveyances of property, many dishonest debtors, perverting the intent of such a beneficent measure, have simulated sales to third parties of such capitals as they possessed, in order to make it impossible for their creditors to collect therefrom the amounts due them.

This is highly injurious to the agricultural and commercial interests of the country, inasmuch as by undermining their very foundation, it absolutely destroys the credit of these two only resources of wealth, whose development and life are thus rendered impossible.

It is, moreover, immoral, and hence the necessity of making more effectual the prohibitions prescribed by our law in the matter. I, therefore, have the honor of submitting for your approval the following:

JUDICIAL ORDER.

1. Stipulations for the conveyance of property entered into after the abolition of the tax on transfers of absolute dominion, not justified under the laws, but effected with the intention of preventing the creditors of either of the parties thereto from making good their claims against such property, shall be considered simulated contracts.

2. Under the preceding article will be comprised all contracts for the transfer of property effected by any person liable at the time for other than mortgage debts, or by any person engaged to guarantee the debts of others, if, upon the execution of said contracts, the notary should not certify in the deed that the price had been delivered in his presence, or unless a deposit in cash has been made in some bank or other institution to the satisfaction of their creditors, covering the full amount of said obligations, or unless sufficient property to meet same has been retained by said debtors.

3. In the cases referred to in the preceding articles, creditors, upon proving the simulation, and for the purpose of collecting their claims or demanding that same be guaranteed, may bring action against their debtor or the party who, as owner, holds the latter's property, said holder being responsible in such cases for the amount due by the direct debtor up to the full value of said property.

4. The attachments that may be decreed by virtue of the action referred to in the preceding article shall be confined, until the expiration of the twelvemonth allowed by the general orders of January nineteenth and thirty-first, 1899, to the anticipatory or preventive inscription thereof in the registry of deeds.

5. Signers of contracts comprised under articles 1 and 2 who fail to cancel same before a notary, within the term of fifteen days from the one next following the publication of this order in the Official Gazette, shall, upon denunciation by their creditors, be prosecuted criminally, and, on conviction, be adjudged guilty of the offense defined in article 562 of the Penal Code.

6. Besides its publication in the Official Gazette and other newspapers of the island, the present order shall be officially communicated to all the presiding judges of courts of justice, who in their turn shall communicate the same to judges of primary courts, municipal judges, notaries and alcaldes within their respective districts, it being the duty of alcaldes to transmit same to the ward-alcaldes (comisarios de barrios) within their municipal limits, for the information of the residents of their respective wards.

San Juan, Porto Rico, March 5, 1899.

(Sgd.) HERMINIO DIAZ NAVARRO,
Secretary of Justice.

Approved:
GUY V. HENRY,
Major General Vols., Commanding.

(This law is only published in the Official Gazette referred to, and in a volume called "Military Orders Having the Force of Law in Porto Rico," volume 2, at page 36, which latter was an official publication of the military government aforesaid.)

The foregoing is clearly a more prohibitive law than is in force in any State within our knowledge. We call the attention of the court, especially in view of the facts found by the court in the present case, to the last two clauses of paragraph 2, which read:

> "or unless a deposit in cash has been made in some bank or other institution to the satisfaction of their creditors, covering the full amount of said obligations, or unless sufficient property to meet same has been retained by said debtors."

It may also be noted that, under the provisions of paragraph 3, the creditor has a choice of remedies and may even recover directly of the fraudulent grantee or holder up to the amount or value of the property held by such person, not being confined to following the property itself.

We shall also later have occasion to call further attention to the provisions of paragraph 5, making the acts so pro-

hibited a crime, in connection with the discussion of the reasons given by the court for excluding the evidence offered by complainants of admissions made by the very parties to the conveyances alleged to be fraudulent.

That the court may not be left in doubt upon the question which may suggest itself, that this order had legally the force ascribed to it as a recognized statute after the adoption by Congress of the law establishing civil government, we take the liberty of quoting short extracts from two opinions of the Supreme Court of Porto Rico, where the above order is recognized and cited and the law, as fixed by it, discussed:

> *Considerando* que si no se puede negar que existe la causa de venta celebrado en 3 de Enero de 1901 entre D. Gorgonio Bolivar Alvarez y su hermana Da. Basilisa de los propios apellidos, puesto que el Notario dá fé de que ésta pagó 63,000 dollars por las cosas vendidas, articulo 1274 del Codigo Civil, no se ha intentado probar como correspondía, despues de la negación, los medios de que se valió Don Herminio Diaz Navarro para reunir aquí esa suma, toda vez que en la carta de autorización nada se le dice ni se habla de la compra ni se ha indicado siquiera la forma ó manera como vino esa importante cantidad á esta ciudad remitida desde España como de la propiedad de la compradora para que fuera realmente el previo de una venta efectiva y entrara positivamente en la propiedad del vendedor, en cuyo caso hubiera podido éste manifestar en el acto del requirimiento que conservaba en su poder cantidad suficiente para cubrir sus obligaciones, ya que también expresó que no depositó en parte alguna el importe de ellas, variando de este modo su situación económica posterior y por consiguente el aspecto jurídico que hoy presenta el contrato realizado.
>
> *Considerando* que estos antecedentes unidos á la manera vaga é inverosímil con que explica Doña Basilisa los medios de reunir esa fortuna, cuando sólo usa cédula de undécima clase, y la extrañesa que causa su determinación inexplicable de adquirir hoy tantas fincas y créditos en esta tierra para ella extran-

gera, deciden el ánimo á hacer la afirmación de que solo predominó en este contrato la intención de que los accreedores del vendidor no pudieran hacer efectivos sus créditos en los bienes aparentemente vendidos, y esto viene á producir un contrato simulado segun la *Orden Judicial de 5 de Marzo de 1899.*

Considerando que para mejor comprender el espíritu de dicha orden hay que acudir a preámbulo que la precede y en él categóricamente se expresa que los contratos con el indicado propósito celebrados "son perniciosos para la vida agrícola y comercial del pais, porque, minándolo por su base, destruyen en absoluto el crédito de esas dos únicas fuentes de riqueza á las que de tal modo se les hará imposible desarrollarse y vivir" y se añade además "que es inmoral y se hace por ello necesario hacer más eficaz la prohibición que en ese punto ya contiene nuestra ley;" de donde "resulta que hay que entender y aplicar en un sentido estricto la referida disposición para evitar los males que la misma indica."

Banco Español *vs.* Diaz Navarro, 2 Castro's Dec. de P. R., 88, 98.

(*Translation.*)

It is adjudged that, if the consideration of the sale made on the 3rd of January, 1901, between Don Gorgonio Bolivar Alvarez and his sister Doña Basilisa of the same name, cannot be denied, since the notary certifies that the latter paid 63,000 dollars for the things sold, art. 1274 of the Civil Code, yet it has not been attempted to prove, as was incumbent on her under the issue made, the means of which Don Herminio Diaz Navarro availed himself in order to gather together here such a sum, while in the letter of authorization nothing is said to him nor is the purchase mentioned, nor has there even been suggested the form or manner in which that important amount came to this city by remittance from Spain as the property of the purchaser for the purpose of being actually the price of a cash sale and of entering in fact into the assets of the seller, in which case the latter would have been able to show in the formal act of requisition that he was reserving in his custody an

amount sufficient to cover his obligations, seeing that he also stated that he did not deposit in bank any part of that amount, thus altering his subsequent economic condition and, as a consequence, the legal aspect which the contract executed presents today.

It is further adjudged that the foregoing circumstances, combined with the vague and improbable manner in which Doña Basilisa explains the means of collecting that large sum, when she uses only a cédula of the eleventh class, and the surprise caused by her inexplicable determination to now acquire so many properties and credits in this (to her) foreign land, bring the mind to the firm conclusion that the only dominant motive of this contract was the intention that the creditors of the seller should not collect their debts from the property apparently sold, and this results in producing a simulated contract according to the Judicial Order of March 5th, 1899.

It is further adjudged that, in order better to understand the spirit of said Order, it is necessary to have recourse to the Preamble which precedes it wherein it is catagorically stated that contracts made for the purpose indicated are "injurious to the agricultural and commercial interests of the country, inasmuch as by undermining their very foundation, it absolutely destroys the credit of these two only sources of wealth, whose development and life are thus rendered impossible" and it is said in addition that "it is immoral, and hence the necessity of making more effectual the prohibition prescribed by our law in the matter;" from which it results that it is necessary to construe and apply the foregoing Order in a strict sense in order to avoid the evils which itself indicates.

The language of the Supreme Court of Porto Rico could hardly have been more applicable had it then had under consideration the case now before this court. And it may be a concession to curiosity to note in passing that the lawyer mentioned in the decision, who had acted for the lady adjudged by the court to be guilty of fraud, was the same who,

as Secretary of Justice, had recommended the promulgation of the military order above quoted.

In a previous case the same court had used the following language:

> "En cuanto al art. 1291 del Codigo Civil y la Orden Judicial de 20 de Marzo de 1899 á que se refiere el segundo motivo, que tampoco han podido ser infringidos, toda vez que si bien dichos preceptos legales declaran rescindibles las enagenaciones hechas en fraude de acreedores, sin exceptuar las de los bienes inmuebles que hayan sido inscritas en el Registro de la Propiedad, parten ambos preceptos del supuesto de que dichas enagenaciones hayan sido hechas en fraude de acreedores legítimos, cualidad que no concurre en el demandante," etc.
>
> Moreno *vs.* Suc. de Bahr, 1 Castro's Dec. de P. R., 456.

(*Translation.*)

> With reference to art. 1291 of the Civil Code and the Judicial Order of March 20th, 1899, which are the bases of the second assignment of error, neither of them can have been violated, because, although those legal precepts make rescindable transfers made in fraud of creditors, without excepting therefrom transfers of real estate which may have been recorded in the Registry of Property, both precepts start with the presumption that said transfers have been made in fraud of legitimate creditors—a condition which the plaintiff does not fulfill, etc.

the reason in that case being that plaintiff's note had been previously barred by the statute of limitations.

We next quote from another decision of the same court, in which the judicial order had not been cited or relied on by the parties, yet in which the court holds that the one fact that the debtor by his conveyance had made it impossible for the creditor to collect his debt is sufficient for the maintenance of the action to set aside the conveyance:

"Segun el artículo 1291 del Codigo Civil en su número 3, son rescindibles, entre otros, los contratos celebrados en fraude de acreedores, cuando éstos no puedan de otro modo cobrar lo que se les deba, y que segun el 2° apartado del articulo 1297 del mismo Codigo se presumen fraudulentas las enagenaciones á título oneroso, hechas por aquellas personas contra las cuales se hubiese pronunciado antes sentencia condenatoria en cualquier instancia ó expedido mandamiento de embargo de bienes; * * * y habiendo estimado la Sala sentenciadora que tales acreedores no pueden cobrar lo que se les debe sino mediante la rescisión de dicha escritura por haber quedado Bird insolvente, cuya apreciación es indiscutible en casación por no haber sido impugnado en debida forma, como más adelante se dirá, es indudable que el contrato de préstamo hipotecario contraído por Bird á favor de Bajandas reune todos los requisitos necesarios para calificarlo de fraudulento, sin que hayan sido en su consecuencia infringidos los textos legales anteriormente citados."

Lopez *et al. vs.* Bird *et al.*, 1 Castro's Dec. de P. R., 364.

(*Translation.*)

According to Art. 1291, sub-head 3, of the Civil Code, contracts rescindable are, among others, those entered into in fraud of creditors, when the latter can in no other way collect what may be due to them, and according to the 2nd paragraph of Art. 1297 of the same Code alienations for a valuable consideration are presumed fraudulent when made by those persons against whom a condemnatory judgment in any instance has been previously rendered, or a writ of seizure of property has been issued; * * * and the trial court having found from the proofs that said creditors cannot collect what is due them except by means of the rescission of said conveyance by reason of Bird having been left insolvent, which finding is conclusive on appeal because of not having been properly challenged, as will be hereinafter stated, it cannot be doubted that the contract for a mortgage

> loan entered into by Bird in favor of Bajandas combines all the necessary requisites to be characterized as fraudulent, without the legal principles above cited having been violated by such finding.

This decision is cited because of the construction given to article 1291 of the Civil Code first mentioned. We do not claim the application of article 1297 to our case, because these complainants had no legal proceedings pending against Tornabells & Co. at the time of the conveyance to Aran, which was only natural, as their places of business, with one exception, were in foreign countries, and they could not know of any intention on the part of said firm to dispose of all its property at one stroke until it was accomplished.

See also—

Valdés *vs.* Lopez, 1 Castro's Dec. de P. R., 55.

For the still further assurance of the court that this was no new construction of the law, but was in accordance with well-settled precedents from Spain, we beg its indulgence for stating and quoting from a decision of the Supreme Court of Spain, rendered in 1895, which covers practically all the points of contention regarding the sale or conveyance now in question. A short statement of the facts is necessary to a proper understanding of the court's conclusions:

> During the years 1883-'5 Pedro Garcia had given notes to one Roldan for five items of indebtedness totaling 3,561 pesetas. On October 10, 1884, said Garcia gave a mortgage to Roldan to secure another debt upon certain real property. The mortgage was not recorded. On March 12, 1890, Pedro Garcia sold the mortgaged property to his brother Joaquin by deed which was recorded on July 31st of that year. In the same month of July Roldan began two suits against Pedro, one to execute his mortgage and the other to collect his unsecured debt. Payment not being made, he attached said real property with-

out protest or any notice of lack of ownership in his debtor and the property was sold at auction under said attachment on March 20, 1891. Two days later, March 22, Joaquin Garcia came in with a claim of ownership, asking that all the attachment proceedings be vacated and said property held subject only to the mortgage of October 10, 1884. Roldan made opposition, attacking the conveyance to Joaquin as in fraud of creditors. Joaquin replied by interposing the prescription, or statute of limitation, of one year under Art. 37 of the Mortgage Law. Roldan in turn replied that Joaquin was not a "tercero," as the conveyance was fraudulent, and prayed to have the conveyance to Joaquin rescinded. Both lower courts decided in favor of Roldan and Joaquin appealed, alleging as his second ground that Arts. 39 and 40 of the Mortgage Law applied only to debtors who had judgments against them or had their property attached at the time they conveyed, and as his third ground that the one-year prescription should have been applied. The following are the conclusions of the Supreme Court on that appeal:

"*Considerando* que declarados en la sentencia recurrida, como fundamentos de hecho, indiscutibles en casación cuando no se invoca el mímero 7° del Art. 1692 de la ley de Enjuicimiento civil, que la venta otorgada por D. Pedro Garcia en favor de su hermano D. Joaquin es fraudulenta y hasta simulada, que por ella el acreedor no podía cobrar los créditos no asegurados con hipoteca y que el adquirente fué partícipe del engaño, la casación es improcedente por los motivos segundo y cuarto del recurso, porque siendo rescindible el contrato por tales fundamentos, conforme al núm. 3° del Art. 1291 del Codigo civil aplicado en la sentencia, al declararlo ésta así en su parte dispositiva, ninguna virtualidad puede tener la infracción alegada de los articulos 40 de la ley Hipotecaria y 1297 de dicho Codigo, que sólo establecen presunciones de fraude, mediante las cuales se llega al mismo resultado;

Considerando por lo que toca al motivo tercero, que la prescripción por un año de la acción rescisoria, á contar desde la fecha de la enajenación fraudu-

lenta, ha sido establecida por el Art. 37 de la ley Hipotecaria por modo claro y explícito en favor de los terceros, ó sea, según la definición que de este concepto hace el 27, en favor de los que no han intervenido en el acto ó contrato inscrito; siendo por ello incuestionable que aquel beneficio no alcanza al recurrente, puesto que no es tercero ni puede considerársele como tal en la venta cuya rescisión fué reclamada por su adversario, toda vez que intervino en ella en calidad de comprador, y que, por lo tanto, el Tribunal *a quo* no ha incurrido en el error de derecho que se le atribuye al no admitir la prescripción por el transcurso de un año y al estimar que la acción ejercitada en el pleito no prescribe hasta los quatro, á tenor de lo dispuesto en el art. 1299 del Codigo civil, aplicable en general á todas las acciones rescisorias, con la excepción consignada en el artículo citado de la ley Hipotecaria en favor de los terceros;

Considerando que el art. 34, citado como infringido en el motive quinto y ultimo, no tiene aplicación al presente litigio, porque no obstante la generalidad del principio consignado en este precepto, que es uno de los capitales de dicho cuerpo legal, la materia de la acción rescisoria por enajenación fraudulenta ha sido especialmente regulada por los 37 y siguentes, y que, por lo tanto, no siendo el 34 aplicable al caso, la Sala sentenciadora no ha podido infringirlo, como se sostiene en dicho motivo, bajo el supuesto inadmisible de que el pleito debía resolverse por aquella ley, con exclusión de las prescripciones del Codigo civil."

Juris. Civil de España, vol. 78, p. 261.

(*Translation.*)

As it was declared in the decree appealed from as a finding of fact, which cannot be questioned on appeal when appellants do not base it upon paragraph 7 of article 1692 of the Code of Civil Procedure, that the sale made by Don Pedro Garcia to his brother Don Joaquin is fraudulent and even simulated, that on account of it the creditor could not collect the debt not secured by mortgage, and that the purchaser was a party to the deception, it is adjudged that the ap-

peal is not well founded as to grounds two and four; because, as the contract in consequence of the above findings was rescindable according to paragraph 3 of article 1291 of the Civil Code which was applied by the court below in its decree, there is no foundation, because said decree so declared, for the allegation of infringement of article 40 of the Mortgage Law and 1297 of the Civil Code, which only establish presumptions of fraud by means of which the same result is arrived at.

As to the third ground of appeal, it is adjudged that the limitation for actions of rescission of one year, reckoning from the date of the fraudulent conveyance, has been established by article 37 of the Mortgage Law clearly and expressly in favor of third persons, that is, according to the definition which article 27 gives of this expression, in favor of those who have not taken part in the act or contract inscribed; it being therefore unquestionable that that advantage does not include appellant, since he is not a third person and cannot be considered as such as to the sale, the rescission of which was demanded by his adversary, as he took part in it in the capacity of purchaser; and that, therefore, the court below has not committed the error of law which is attributed to it upon its having disallowed the defence of prescription by the lapse of one year, and upon its holding that the right of action claimed in the suit is not barred until four years, in accordance with the provisions of article 1299 of the Civil Code, which is applicable in general to all actions for rescission, except as specified in said article of the Mortgage Law in favor of third persons.

It is adjudged that article 34 of this law, claimed by the fifth and last ground of appeal to have been violated, has no application to the present controversy; because, notwithstanding the generality of the principle enunciated by its terms, which is one of the essentials of that legal work, the matter of rescissory actions by reason of fraudulent conveyances has been specially regulated by articles 37 *et seq.*; and that, therefore, article 34 not being applicable to the case, the trial court could not have violated it, as that

ground of appeal avers upon the unfounded supposition that the suit should have been determined in accordance with that law to the exclusion of the provisions of the Civil Code.

To a similar effect we might quote from the following decisions of the same court:

Juris. Civil, vol. 79, p. 924, first considerando.

Juris. Civil, vol. 80, p. 138, 1st and 2nd considerandos.

Juris. Civil, vol. 82, p. 552, eighth syllabus.

In view of the various sections of the codes and of the numerous decisions above cited, it seems clear that the conclusion of law numbered 1 was reached only in consequence of the delusion under which the court labored in reaching conclusion numbered 2, else said decisions must have forced the court to an opposite conclusion under the facts found, even if we consider findings of fact numbered 4 and 5 alone (page 67), which showed that a partnership with large and varied assets had by one act rendered itself absolutely insolvent. Our inference is further supported by the line of reasoning employed by the court in reaching the conclusion that complainants' bill should be dismissed before any findings of fact had been made except as indicated in said opinion, as appears on page 63 of the record:

> "Tornabells & Co. had themselves already procured a suspension of payments through the local courts, and it was natural that they should make some effort to realize from their property with a view to paying some portion, or the whole, of their debts. We cannot see why they did not have the right to do this, and to prefer any creditor they saw fit to prefer, and why creditors did not have the right to exercise diligence in securing their debts from them in any way they could. We cannot see why J. Tornabells & Co. could not have done all that is alleged in the way of transferring to Aran, and the latter mortgaging to Duran so as to get secured notes to use. There was

nothing wrong about that unless Tornabells & Co. kept or reserved some benefit to themselves. If it was simply a unique system of banking, there was nothing wrong about it; and if the notes were to be spread broadcast for value, or given to particular creditors, and the property that backed them was effectually lost without privilege of redemption to J. Tornabells & Co., we are wholly unable to see what was illegal about it.

"Let us suppose that Tornabells & Co., instead of selling their property to Aran, had directly themselves issued their own notes secured by all this property, and had sold these notes in the open market just like bonds. What would have been wrong about the transaction? After the sale of the notes, attacking creditors at most could only go after the equity of redemption. They could not set the transaction aside nor embarrass the holders of the notes in any way, and if the property was all eaten up in payment of the notes, that would be the end of it. Now, how is this case materially different from that sort of case? That is why in the light of the evidence of the actual payment by Aran for this property, we are unwilling to disturb the titles of so many people, on a mere suspicion that Tornabells & Co. may have had some secret understanding with Aran and Duran."

This strikes us as rather crude reasoning. The simple and effective answer to it is that, whether the court could see anything morally wrong in it or not, the written law previously quoted, which should have governed the court, had distinctly declared it to be wrong and any person who did it guilty of a crime. In other words, the laws of Porto Rico had said to debtors: "You shall not be allowed to decide for yourselves how you may wish to arrange to pay your creditors at some future time. They have a right to be paid when their claims are due and, if you do not pay them, you must hold your property where they can find it to levy upon or, if you sell it, you must deposit sufficient of the money in some bank to satisfy them or show them you have sufficient other property remaining in your name." The court

specifically finds that Tornabells & Co. did not do these things, yet says there was nothing illegal about the transaction.

How entirely the court ignored the local law upon the subject is further shown by the language and substance of its opinion on page 64 of the record, where several decisions of American courts are cited, those being chosen which most nearly conform to the views above expressed by the court, but which only tend to show that in some States the common-law rule in that regard has been to some extent modified by statute or judicial decision, and therefore to demonstrate, if the local law be kept in mind, that such decisions cannot be applicable to this case.

Even could the law as settled in the States be applicable, the weight of authority is largely against the position taken by the court below.

Carter *vs.* O'Brien, 105 Ala., 305.
Bank *vs.* Northup, 22 N. J. L., 58.
N. Y. Fire Ins. Co. *vs.* Tooker, 35 N. J. Eq., 408.
Corbitt *vs.* Cutcheon, 79 Mich., 41.
Oppenheimer *vs.* Guckenheim, 39 Fla., 617.
Elser *vs.* Graves, 69 Tex., 222.
Seger's Sons *vs.* Thomas Bros., 107 Mo., 635.
Levy *vs.* Williams, 79 Ala., 171.
Aiken *vs.* Steiner, 98 Ala., 355.
Schaferman *vs.* O'Brien, 28 Md., 565.
Beidler *vs.* Crane, 135 Ill., 92.
Martin *vs.* Marshall, 54 Kan., 147.
Chevalier *vs.* Commins, 103 Cal., 580.
Venable *vs.* Bank, 2 Pet., 107.
Jones *vs.* Simpson, 116 U. S., 609.
Shauer *vs.* Alterton, 151 U. S., 607.
Walker *vs.* Collins, 1 C. C. A., 642.
Brittain *vs.* Crowth, 4 C. C. A., 341.

But these cases cannot be applicable, since it has been held distinctly by this court that in the construction and application of statutes of the nature of statutes of frauds, Federal courts should follow the local decisions.

Moses *vs.* Nat. Bank of Lawrence Co., 149 U. S., 298.

Both the findings of fact, as set forth on pages 67 to 69 of the record, and the discussion by the court in its opinion of the "Badges of Fraud" which complainants had claimed existed, as seen on pages 60 to 62, demonstrate how vitally this error of the court affected the result against the rights of the complainants.

Point II.

The statute of limitation of one year protects only innocent third persons, while the statute of four years applies to all implicated in the fraud.

The third assignment of error refers to the ruling of the court that complainants were barred of their remedy by the limitation of one year (conclusion of law No. 3), that limitation being found in article 37 of the mortgage law, hereinbefore quoted (*supra*, p. 13).

This also was a ruling of vital importance, because the bill itself alleged that the fraudulent conveyance by Tornabells & Co. was made and recorded in May, 1900, while the suit was not begun until more than *two years* thereafter, that time being necessarily consumed in foreign creditors, like most of the complainants, learning of the conveyance and obtaining the required judgments and returns of *nulla bona*. Hence, if no suit could be brought even against the principals in the conveyance themselves unless "within one year from the time of the fraudulent conveyance," complainants were clearly barred of their remedy. But that article of the mortgage law is expressly limited by its terms

to "the third person," who "shall not be prejudiced by any action for rescission not brought within one year." The limitation as against parties not "third persons" is fixed by article 1299 of the Civil Code, hereinbefore quoted, at *four* years, as expressly ruled in the last case quoted from the Supreme Court of Spain under the previous head of this brief (*supra*, p. 26).

By the allegations of complainants' bill and subsequent amendments every party defendant thereto was charged with either being parties to or having knowledge of the fraudulent intent of Tornabells & Co., and with having acquired whatever interest he claimed after possessing such knowledge. But as to Tornabells & Co. and Aran, the two *parties* to the conveyance alleged to be fraudulent, they could under no circumstances be entitled to the protection of this limitation, as they could never be "third parties." Hence the conclusion of law in question was erroneous and prejudicial, whatever the state of proofs as to the other defendants, provided our contention above stated as to the application of the one-year limitation is correct.

The wording of the statute seems to be too clear to give room for argument, but as counsel's contention below was insistent and apparently misled the court, and as the precedents upon the question are abundant, we will ask the patience of the court to quote from a few:

(I) *From the Supreme Court of Porto Rico.*

(A) In the year 1894 Lopez began a suit against Valdés in which he was unsuccessful, and judgment for heavy costs was entered against him in September of that year. In November, 1895, Lopez conveyed all his property to one Gastambide and in March, 1896, Valdés brought suit for the rescission of that conveyance, alleging that it had been made so as to prevent his collecting said judgment for costs, as it left Lopez insolvent. This suit resulted in a decree for Valdés declaring the conveyance rescinded and

ordering its record in the Registry of Property canceled. Lopez appealed and the Supreme Court affirmed the decree below, explaining the application of articles 36 and 27 of the Mortgage Law as follows:

"Si bien el artículo 36 de la Ley Hipotecaria preceptúa que las acciones rescisorias no se darán contra tercero, que haya inscrito los títulos de sus respectivos derechos, tratándose como se trata de la rescisión de la venta de la hacienda Santa Bárbara, otorgada por Don Miguel Lopez á favor de su hijo Don Miguel Lopez Gastambide, éste no puede reputarse tercero respecto de dicho contrato por haber intervenido en el mismo, al tenor de lo que preceptúa el artículo 27 de la Ley citata, aparte de que, aún en el supuesto de que se repute tercero á Don Miguel Lopez Gastambide con relación al pleito que con Don Miguel Lopez Gomez sostuvo Don Ramon Valdés, tampoco le favorecería el precepto del artículo 36, por cuanto el 37 exceptúa, de la regla contenida en el anterior, las enajenaciones hechas en fraude de acreedores, cuando el tercero haya sido cómplice en el fraude, como lo fué Don Miguel Lopez Gastambide, según apreciación de la Sala sentenciadora que no ha sido impugnada en casación, no habiéndose infringido por tanto los artículos 36, 37 y 27 de la Ley Hipotecaria según se supone en los motives 10, 11 y 13 del recurso."

Valdés *vs.* Lopez, 1 Castro's Dec. de P. R., 53. S. C., 1 Sentencias del Tribunal Supreme de P. R., 190, 197.

(*Translation.*)

Although article 36 of the Mortgage Law provides that suits for rescission shall not be instituted against third persons who have recorded the instruments of their respective interests, yet as we are treating of the rescission of the sale of the plantation Santa Barbara, made by Don Miguel Lopez to his son Don Miguel Lopez Gastambide, the latter cannot be considered a third person in respect to said contract on account of having been a party to the same, according to the provision of article 27 of said law; besides which, even on the supposition that Don Miguel Lopez

> Gastambide may be considered a third person in relation to the suit which Don Ramon Valdés is having with Don Miguel Lopez Gomez, the rule stated in article 36 could not benefit him inasmuch as article 37 excepts from the rule laid down in the former conveyances made in fraud of creditors, when the third person might have been a party to the fraud, as was Don Miguel Lopez Gastambide according to the finding of the trial court which has not been questioned on the appeal; wherefore articles 36, 37 and 27 of the Mortgage Law have not been violated as is supposed by the 10th, 11th and 13th grounds of the appeal.

Two years later the same court in the case of Lopez *et al. vs.* Bird *et al.*, 1 Castro's Dec. de P. R., 361, and 2 Sent. del T. S. de P. R., 630, repeated the same language, closing the statement of the principle with the following reference to the particular facts:

> (B) "Cuando el tercero haya sido cómplice en el fraude, como lo fué Bajandas por el hecho de haber representado á la Sociedad Guillermo Bird é hijo en el pleito en que se practicó el embargo de las dos casas, las que, no obstante ese embargo, fueron hipotecadas luego su favor."
>
> (*Translation.*)
>
> "When the third person might have been a party to the fraud, as was Bajandas because of the fact of having represented the firm of William Bird & Son in the suit in which the two houses were attached, notwithstanding which said houses were afterwards mortgaged in his favor."

In another case from the same court, after reciting various proven facts, some from written instruments, others from oral testimony, which convinced the court that one litigant had knowledge, or at least notice, that the other litigant had acquired a servitude upon the land which the former had proceeded to buy and place his deed on record, without men-

tion of this existing incumbrance which was not recorded, upon suit brought by the holder of the incumbrance to cancel the record of the deed of the other as against said incumbrance, the court gave the relief asked, and upon appeal the Supreme Court used this language:

> (C) "—hechos todos que convencen y demuestran era sabedor de la carga que sobre el terreno por él comprado pesaba, teniendo por tanto conocimiento al adquirir la finca, ó con anterioridad, de esa carga, por cuya circunstancia no puede tener el carácter de tercero, esté ó no inerita la finca, por ser doctrina constante en varias sentencias del Tribunal Supremo (de España)."
>
> del Valle *vs.* Valdés, 1 Castro's Dec. de P. R., 45.

(*Translation.*)

> —all which facts (referring to the proof of knowledge) conclusively prove and demonstrate that he had knowledge of the lien which burdened the land bought by him; therefore, having knowledge at the time of acquiring the property, or previous thereto, of that lien, he cannot have the character of a third person, whether or not the title to the property was recorded, according to the settled doctrine of the decisions of the Supreme Court of Spain.

(II) *From the Supreme Court of Spain.*

> (A) *Considerando* que la prescripción de la acción rescisoria por termino de un año, contado desde el dia de la enajenación fraudulenta, está de modo claro establecida en el art. 37 de la Ley Hipotecaria exclusivamente á favor de los terceros, reputándose como tales para los efectos de esta disposición los que no han intervenido en el acto ó contrato inscrito, á tenor de lo prevenido en el art. 27, y corroborado por el citado anteriormente, según el cual la existencia de tercero supone siempre una segunda enajenación, como así lo ha establecido también este Tribunal Supremo;
>
> *Considerando,* por lo expuesto, que ejercitada la

acción rescisoria no contra terceros sino contra los herederos y causa-habientes del comprador, carácter que tienen los recurrentes, la Sala sentenciadora, que desestimó la exceptión de prescripción que los mismos alegaron por no serles aplicable el art. 37 de la ley Hipotecaria, no ha cometido la infracción del mismo invocada en el primer motivo del recurso, ni la del art. 41 que, sin referirse á la prescripción se limita á determinar cuando el poseedor es cómplice en el fraude en el caso 2°, num. 2°, del repetido art. 37, habiendo interpretado rectamente dicha Sala el art. 1299 del Codigo civil, aplicable á los acciones rescisorias, con la excepción prevísta en el que acaba de citarse, y á tenor del cual sólo prescriben aquéllas por el termino de cuatro años, no transcurrido en el presente caso."

Juris. Civil, vol. 91, pp. 981, 986.

(*Translation.*)

It is adjudged that the prescription (limitation) of actions for rescission by the term of one year, reckoned from the day of the fraudulent conveyance, is clearly established by article 37 of the Mortgage Law exclusively for the benefit of third persons, those being considered such for the purposes of that provision who have not been parties to the act or contract recorded, as is prescribed by article 27 and corroborated by the article before cited, according to which the existence of a third person (in that sense) always presupposes a second conveyance, as this Supreme Court has also held.

Accordingly, it is further adjudged that, as the present action for rescission is brought, not against third persons, but against the heirs and representatives of the purchaser, in which character the appellants appear, the trial court, which overruled the exception of prescription interposed by these same parties because article 37 of the Mortgage Law was not applicable, has committed no infraction of the same as alleged in the first ground of appeal, nor of article 41 which, without containing any reference to prescription, is limited to determining under what

circumstances the party in possession is an accomplice in the fraud under the second subdivision of paragraph 2 of said article 37; and that said court rightly interpreted article 1299 of the Civil Code, which is applicable to rescissory actions, with the exception fixed by the article which has just been cited, and according to which those actions are only barred by the lapse of *four years*—which have not elapsed in the present case.

(B) *"Considerando,* que es inaplicable al presente caso, y tampoco ha podido ser infringido el art. 39 de la ley Hipotecaria ni la doctrina al mismo relativa, citados en el primer motive, porque no se trata de sugundas enajenaciones, á las cuales se refiere únicamente dicho artículo, en relación con el caso 1°, num. 2°, del art. 37 de la misma ley, y porque, abstracción hecha de lo que acaba de exponerse, tampoco tendría aplicación al presente caso, según el num. 3° del ultimo artículo, por ser cómplices los hijos del deudor."

Juris. Civil, vol. 98, p. 367.

(*Translation.*)

It is adjudged that neither article 39 of the Mortgage Law, nor the doctrine relative to the same, cited in the first ground of appeal, is applicable to the present case, and hence cannot have been violated, because there are involved no second transfers, to which alone said article refers in connection with subdivision 1 of paragraph 2 of article 37 of the same law, and because, aside from what has just been stated, it could not apply to the present case, according to paragraph 3 of the last article, on account of the sons of the debtor being accomplices.

Also see

Juris. Civil, vol. 97, p. 525.

It may be claimed that article 36 of the Mortgage Law forbids the bringing of actions for rescission against "terceros," but the contrary was distinctly held in the case of

Valdes *vs.* Lopez (*supra,* page 32), in the Supreme Court of Porto Rico, and has been similarly held by the Supreme Court of Spain, where conveyances in fraud of creditors were involved.

Juris. Civil, vol. 57, page 40.
Juris. Civil, vol. 59, page 837.

We therefore submit that the one-year limitation could never be held to apply for the benefit of Tornabells, Doitteau or Aran, or their heirs, nor for the benefit of any subsequent party who was an "accomplice in the fraud," or who had knowledge of the same when he acquired his interest—hence the court committed error gravely prejudicial in holding broadly that said limitation was fatal to complainants' right of action, instead of giving them the benefit of the four years fixed by article 1299 of the Civil Code, within which period this suit was begun.

But, if necessary, we might go farther and contend that, even if the statute of one year were strictly applicable in a court of law, a court of equity would not be absolutely bound by such statutes, as that court merely applies them by analogy when they seem fair and just, but sometime shortening, at other times extending, the time, as justice may require.

Allore *vs.* Jewell, 94 U. S., 506.
Sullivan *vs.* R. R. Co., 94 U. S., 806.
Kibby *vs.* L. S., etc., Co., 120 U. S., 130.
Ide *vs.* Trorlight Co., 115 Fed. Rep., 137.
Potts *vs.* Alexander, 118 Fed. Rep., 885.

We submit that a statute of limitation of one year in a small island like Porto Rico, where much of its commercial intercourse was necessarily with foreign countries, should not be applied by a court of equity against foreign creditors, as the record shows these were, especially where the defendant firm was in suspension of payments and a war, followed by a change of sovereignty, had recently occurred.

Point III.

The testimony offered as to the admissions, made by defendant Tornabells before the conveyance was executed, was admissible.

This covers the fourth assignment of error. Complainants produced as a witness in their behalf F. L. Cornwell, who was also one of their solicitors. Mr. Cornwell first testified generally that he was an attorney at law; that Tornabells & Company had been clients of his from the time he settled in Porto Rico, up to shortly before they made the transfer to Aran; and that subsequently to that he represented them on some occasions (p. 70).

Upon the asking of the succeeding question one of the counsel for some of the defendants (Mr. Dexter) objected to Mr. Cornwell testifying to any conversation with Tornabells touching the conveyance in controversy because of the relation of attorney and client alleged to be existing between them and because he was in a sense a complainant by reason of being employed upon a contingent fee. Mr. Dexter was permitted by the court to examine the witness in order to bring out these points (pp. 71-73). Mr. Boerman, counsel for another defendant, objected to the proposed testimony upon the further ground that the witness as an interested party could not disclose conversations with a person since deceased (p. 74). At this point the court took these objections under advisement during the noon recess. Upon reconvening the court made the following statement (p. 79):

> "The Court: What I want to settle in my mind is whether a client, who had been employing a certain firm for years and then ascertaining that they had obtained a case against him and then consulted them knowing that they had the case against him, whether or not, if the attorney chose to come and testify as to what the client and deceased, as it happens here, con-

fided to him, he will be permitted to testify as what may be in favor of his present client."

Whereupon, after a few words more from counsel, the court answered:

"I am going to permit Mr. Cornwell to testify, reserving the right to see what it is, giving all the counsel a right to except."

Mr. Dexter then interposed, by permission of the court, with some record proof of the cases in which Mr. Cornwell had represented Tornabells & Company, after which Mr. Cornwell proceeded with his testimony (page 81). We quote the report of his testimony upon this point verbatim:

There was present Mr. Joaquin Tornabells, his partner Mr. Carlos Doitteau and Arturo Teillard, the French Vice-Consul.

The COURT: How long before the actual transfer was that?

I don't know the exact dates. I should say it was probably thirty days before the transfer, but that is more or less. I don't remember the exact date. They came to my office and Mr. Tornabells I think was the spokesman of the party, although Mr. Teillard was the right-hand man of that firm, although he was not a member of it. They explained to me the fact that they went into suspension of payments and they could not pay their debts.

Q. Do you know why the French Vice-Consul came along with them?

Doitteau was a Frenchman and he and Teillard were great friends. In fact, in all the business I ever did for them, this man Teillard intervened. They explained their position, that they were in suspension of payments and they could not meet their obligations, and Mr. Tornabells and Mr. Teillard and Mr. Doitteau unfolded a scheme to me. They said one of them,—I don't remember which one—had been down to Aguadilla and had consulted a lawyer down there, who was not practicing at that time. He was a sugar planter, Amel. He owned the Coloso

factory at that time. The scheme that they presented was as follows: That they would make a mortgage in favor of Louis Aran,—I don't remember the exact sum they said for, and against that they would issue a certain number of 'vales hipotecarios,' notes against the mortgages, and they were to be payable to bearer. According to the scheme they presented to me, they were to be payable to bearer. And in that way they would make the sale of all the properties to Aran, and Tornabells would get these notes. They had some scheme whereby they would protect Aran. I think Doitteau owed Aran some money and they were actually going to take care of him, and the rest of the notes were to go to Tornabells. They came up to consult me about their scheme, and they wanted to know, if they made such a scheme, if I would represent them, if I would act as their counsel and whether it would stand the test of law and attack in the Federal Court. I told them I could not represent them. They were men who had been very kind to me and I had received money from their house in fees. But I told them the only thing to do was to go into bankruptcy, but that I could not represent them in a matter of that kind and I could not represent them at all. In any business that was straight I would represent them, but that that was crooked. They discussed it there in the office and they asked me some questions. I don't remember the details. After they left, the next I heard of the affair was when it transpired with some different details from what they expressed in the office.

The COURT: How long a time transpired before you heard of it again?

I couldn't tell you, but it was within two months.

As a supplement to the foregoing should also be quoted the further statements of the witness, in answer to questions by the court (page 83):

Q. When they came into the office, who did they say they wanted to defraud, or did Tornabells want to keep all his property or to make some creditors preferred?

A. That was the idea. There were one or two of his friends he wanted to protect, but the general idea was to save all his property; although I will say this for Tornabells: he said there in the office that his intention was finally not to defraud any of his creditors, but he hoped finally to pay everybody back.

Q. He simply wanted to possess his property so as to get out of it sufficient to pay his debts?

A. That was possibly what he wanted to do with it.

Although this, and other testimony referred to in following assignments of error, was at the time allowed to be given, the court reserved its final decision as to its admissibility, and upon its final consideration of the case ruled that it should be excluded, as stated at the close of the judge's certificate as to rulings on evidence (page 86), and in his written opinion (page 59) the ruling as stated in the certificate is as follows:

"As appears from the above, the court tentatively allowed the foregoing evidence of said witness Cornwell to be admitted, but subsequently upon the consideration of the testimony as a whole and upon making its findings of fact and law and rendering its decision herein the court did determine and rule that defendants' objections to the testimony of said witness Cornwell in so far as the same related to conversations between said witness and Joaquin Tornabells, Carlos Doitteau or Luis Aran should be sustained and said testimony excluded, because the plan outlined by said Tornabells during said conversation did not constitute a fraud upon creditors under the laws of Porto Rico at that time in force, hence the privilege existing as to confidential communications between attorney and client was applicable thereto, and further because such testimony involved admissions of a dead man against the interests of his own heirs who are parties to the suit."

* * * * * * *

"To which decisions and ruling of the court, re-

jecting and excluding the testimony aforesaid, the complainants by their counsel did then and there except."

The question involved, therefore, is whether the privilege protecting confidential communications between attorney and client is unlimited; and, if not, whether the communication made by Tornabells to Cornwell was of such a character as to forfeit his right of privilege. We claim that not all such communications are privileged and that the statement in question was such as to forfeit the privilege.

It seems hardly necessary, in view of the decisions already cited under Point I, to discuss the question whether the scheme outlined in the above testimony of Cornwell involved an unlawful and fraudulent intention. We claim, as we have before stated, that it was under the laws of Porto Rico not only fraudulent but criminal; and, if so, the reason given by the court below for excluding the testimony falls. Yet as very similar circumstances have been considered and described by this court in a case before it, we take the liberty of quoting a comprehensive paragraph:

> "We have considered this case, so far, upon the assumption of the circuit justice, that the agreement was executed and delivered by Ferguson to Dent in good faith as to Ferguson's creditors. We do not concur in this assumption. If the voluminous record before us discloses a single fact tending to sustain that assumption, except a general expression of opinion by some of the witnesses that he was an honest man, it has escaped our search. The instrument itself was executed under circumstances which would lead a court to presume fraud upon creditors. It was a conveyance by a person deeply indebted, in anticipation of decrees and judgments, which, added to the existing incumbrances, amounted to the value of his property. We, therefore, agree with the district judge on this point, that the real contract was one between Ferguson and Dent to defraud the creditors out of the property conveyed, and to so conceal and

cloud the title that they could be circumvented, hindered, and delayed, and coerced into settlements and compromises. We think the evidence shows beyond doubt that Ferguson willingly participated for ten years in carrying out this plot." * * *

"We do not think that complainant's counsel gives an explanation of the testimony of McWilliams which strengthens their claim to relief. That claim, stated in his own language is: 'That Ferguson placed his property in Dent's hands, to be used in liquidating his debts; and when this was done, the property, or so much of it as had not been consumed in the payment of lebts, was to be restored to Ferguson; and that in the meantime Ferguson was to have enough of the rents to live on.' * * *

"Such an arrangement, so entirely inconsistent with the absolute conveyance of the property as executed between the parties, has all the features of a fraud upon creditors. It reserves to the grantor the enjoyment of the rents and profits of the property conveyed, to which the creditors have a right of immediate appropriation to their debts, and involves a secret trust for the return to himself of property of which such creditors have the immediate right of sale. The law does not countenance any such transaction, but leaves both parties in the position where they have placed themselves. Lukins *vs.* Aird, 73 U. S., 6 Wall., 78."

Dent *vs.* Ferguson, 132 U. S., 50, 62, 67.

It is worthy of note that no State statute is cited or referred to either by the court or by counsel as influencing the equitable principles controlling the above decision.

Another case from this court in which the decision is based upon the Alabama statute, said to be "copied from the English statute of 13th Elizabeth," which we have under Point I shown to be so similar to the Porto Rican law, states the law thus positively:

"If an individual, being in debt, shall make a voluntary conveyance of his entire property, it would be a clear case of fraud; but this rule would not apply

if such a conveyance be male by a person free from all embarrassments and without reference to future responsibility.

* * * * * * *

"But to avoid the settlement insolvency need not be shown or presumed. It is enough to know that, when the settlement was made, Goffe was engaged in merchandises principally on credit; his means consisted chiefly of a broken assortment of goods, debts due for merchandise scattered over the country in small amounts, wild lands of little value, a few negroes, and a very limited amount of improved real estate, the value of which was greatly overestimated. On such a basis, no prudent man with an honest purpose and a due regard to the rights of his creditors, could have made the settlement. A conveyance under such circumstances, we think, would be void against creditors at common law."

Parish *vs.* Murphree, 13 How., 92, 98, 100.

Other courts have followed the above precedents and plainly stated the principle, citing much additional authority. See—

Thompson *vs.* Crane, 73 Fed. Rep., 327.

Plow Company *vs.* Sherman, 32 L. R. A., 33, and notes.

The above-cited American cases merely serve to show the identity of principle underlying these decisions and those of the Porto Rican and Spanish courts cited under Point I—which renders easy an affirmative answer to the question of the admissibility of Cornwell's testimony as against the objection of privileged communication—unless that privilege can cover communications involving the commission of a proposed fraud.

It is therefore necessary to determine the exact limits of a client's privilege in that regard.

The general rule was early stated in this court by Justice Story and has never been doubted:

> "The general rule is not disputed, that confidential communications between client and attorney are not to be revealed at any time. The privilege indeed, is not that of the attorney but of the client; and it is indispensable for the purposes of private justice. Whatever facts, therefore, are communicated by a client to counsel, solely on account of the relation, such counsel are not at liberty even if they wish, to disclose; and the law holds their testimony incompetent."
>
> Chirac *vs.* Reinecker, 11 Wheat., 280, 294.

No case arose, so far as we have discovered, in which this court was called upon to determine the exceptions to this general statement until many years later in a criminal case. There the trial court had admitted a communication from client to counsel which the Government claimed involved a scheme to commit the crime, while the defendant claimed it was protected by his privilege. This court reversed the conviction because it found the communication not even to indicate any wrongdoing, but in discussing the limitations of the privilege of such communications it quoted with approval the English case of Queen *vs.* Cox and the statement by Mr. Justice Stephen therein that—

> "the question was, 'whether, if a client applies to a legal adviser for advice intended to facilitate or to guide the client in the commission of a crime or fraud, the legal adviser being ignorant of the purposes for which his advice is wanted, the communication between the two is privileged? We expressed our opinion at the end of the argument that no such privilege existed. If it did, the result would be that a man intending to commit treason or murder might safely take legal advice for the purpose of enabling himself to do so with impunity, and that the solicitor to whom the application was made would not be at liberty to give information against his client for the purpose of frustrating his criminal purpose.' After citing and commenting upon a large number of cases, he comes to the conclusion that, if the com-

> munication be made in furtherance of any criminal or fraudulent purpose, it is not privileged."
> Alexander *vs.* United States, 138 U. S., 353. 358.

The Cox case was later (1895) approved in England in Williams *vs.* Quebrada, etc., Ry. Co. (2 Ch., 751).

In other American jurisdictions the decisions have not been uniform, the earlier cases tending to restrict the exception to the privilege to where the communication involved an intent to commit a crime or some act *malum in se*, and Chancellor Walworth felt constrained to follow them against his better judgment, as he stated in

Bank of Utica *vs.* Mersereau, 3 Barb. Ch., 528, 598.

It remained, however, for Vice-Chancellor Greene, of the New Jersey Chancery Court, to make such an exhaustive and conclusive review of the body of the law upon the subject that his conclusions have not been, and in our judgment cannot be, successfully controverted. He reviews all the prior decisions, especially those upon which Chancellor Walworth depended, shows that the English cases have been overruled by the Cox case, cited by this court in the Alexander case, *supra*, and that all the American cases were a more or less blind following of these English cases, now overruled, and finally states the law as he finds it to be as follows:

> "As I understand the case, the rule in its different phases and the reasons may be thus stated: If the client consults the lawyer with reference to the perpetration of a crime, and they co-operate in effecting it there is no privilege, for it is no part of an attorney's duty to assist in crime—he ceases to be counsel and becomes a criminal. If he refuses to be a party to the act, still there is no privilege, because he cannot properly be consulted professionally for advice to aid in the perpetration of a crime. In the case of a fraud, if it is effected by the co-operation of the attorney, it falls within the rule as to crime, for their consultation to carry it out is a conspiracy,

which, on its accomplishment by the commission of the overt act, becomes criminal and an indictable offense.

"If the client discloses his fraudulent purpose and the attorney does not join in the scheme, but repudiates all connection with it, there cannot be, properly speaking, professional employment to effect such purpose, and consequently there is no privilege; if the client does not frankly and freely disclose his object and intention, as well as the facts, there is no professional confidence, and consequently no privilege. * * *

"The question has never been decided in any reported case in this State, and, in my judgment, the rule as laid down by the court of queen's bench should be adopted, not only on account of the great weight of such an authority, but because it puts the question of privileged communications on high ground of honesty and integrity, worthy of the dignity and honor of the profession of the law.

"The principal case was on indictment, but the rule is as imperative in civil causes—the only difference being in the method of its application."

Matthews *vs.* Hoagland, 48 N. J. Eq., 455, 469.

If the case from Massachusetts, in 12 Pickering, cited by Chancellor Walworth, supports the result stated by him, it has been at least doubted in that jurisdiction in a more recent case, wherein the court says:

"If the case disclosed anything having a tendency to show that the witness (a lawyer) was acting for himself as a party to the transaction, or that he was consulted in aid of any intended fraud, or that his advice was asked for any dishonest purpose, the matter would have raised a more serious question."

Higbee *vs.* Dresser, 103 Mass., 523, 526.

In Missouri the Hoagland case, above quoted from, has been cited and followed after a full review of all the precedents, the Kansas City Court of Appeals stating the ques-

tion in the form "How will this apply to things so low down in the scale of wrong as cheating creditors?" and answering it as follows:

> "That there ought not to be any distinction or difference, in principle, between crime and fraud, in the respect of applying a privilege of concealment to either, I have no doubt. Both are the doing, or contriving to do, things *mala in se*. Both are against conscience. That they were regarded as being without distinction in Queen *vs.* Cox & Railston (a case of fraud) is seen from the interruption of counsel during the argument.
>
> * * * * * * *
>
> "Our Statute of 1889, sec. 3568, makes every one a party to the conveyance of goods and chattels for the purpose of defrauding creditors guilty of a misdemeanor, but I attach no importance to this in determining the question. To cheat or defraud is bad in itself, and does not require the condemnation of statute law to become iniquitous."
>
> Hamil and Co. *vs.* England, 50 Mo. App., 338, 346.

In other jurisdictions the rule has been declared as laid down above by the New Jersey court:

> "The rule, however, is well settled that communications made to counsel in contemplation of fraud or a criminal act are not privileged."
>
> Hartness *vs.* Brown, 21 Wash., 655, 668.

> "The act of preference (of one creditor over another by a failing debtor) is prohibited and rendered illegal, and whatever be the method adopted to attain the illegal object, courts should treat it as coming under the ban of the statute. This being true, is the communication between attorney and client, looking to the accomplishment of such an illegal object, entitled to protection as privileged and confidential? Is it any part of the duty of an attorney to counsel as to the best methods of violating the law; and must he keep secret and inviolate

information imparted to him of the intention and purpose of his client to do so? Such a doctrine would be contrary to public policy, subversive of the principles of justice, contrary to good morals, and bring our honorable profession into merited contempt with all just-minded men. 'Where a solicitor is a party to a fraud, no privilege attaches to the communication to him on the subject, because the contriving of a fraud is no part of his duty as solicitor.' 1 Whart. Ev., sec. 590; Poole *vs.* Railway Co., 58 Tex., 134; Cutts *vs.* Pickering, 3 Ch. R., 66; Russell *vs.* Jackson, 9 Hare, 389."

Taylor *vs.* Evans (Court of Civil App. of Texas, 1894), 29 S. W. Rep., 172.

The above case does not seem to be officially reported in the Court of Civil Appeals reports.

In the United States Circuit Court of Appeals for the Second Circuit the determination of the actual question before the court was based upon the terms of a statute of New York (where the case originated), but at the close of the opinion the court takes occasion to say:

"Before the statute, the privilege did not apply to all communications between client and attorney, but only to such as passed between them in professional confidence; and the courts generally repudiated the proposition that the contriving of a fraud or the conniving in a crime could form part of the professional occupation of an attorney or counsel."

Butler *vs.* Fayerweather, 33 C. C. A., 625.

This last case also holds, with citation of authorities, that "the laws of the State (or Territory) in which the court is held are the rules of decision for the courts of the United States as to the competency of witnesses," and that probably "this provision supplies the criterion of the competency of evidence as well as the competency of witnesses."

See also—

Insurance Co. *vs.* Union Trust Co., 112 U. S., 250.

Building & L. Ass'n *vs.* Robinson, 7 C. C. A., 444.

It is pertinent, therefore, to inquire as to the local statutes upon the question under discussion. The legislature of Porto Rico passed a law of evidence in 1905 (no settled rules existed under the Spanish régime) and the sections here applicable are the following:

> SECTION 35. In conformity with the preceding provisions, evidence of the following facts may be given upon a trial:
>
> * * * * * * *
>
> 2. The act, declaration, or admission of a party as evidence against such party.
>
> * * * * * * *
>
> 4 The act or declaration, verbal or written, of a person deceased or out of the jurisdiction of the court, in respect to the pedigree, birth, parentage, age, marriage, death, or relationship, of any person related by blood or marriage, to such person; *the act or declaration of a deceased person done or made against his interest in respect to his property.* (Italics ours.)
>
> SECTION 38. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded, etc.
>
> (Section 39 excludes persons of unsound mind and children under 10 years of age who appear incapable.)
>
> SECTION 40. A person cannot be examined as a witness in the following cases:
>
> 1. (Treats of husband and wife.)
>
> 2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity; but this paragraph shall not

be applied to an action between the lawyer and his client, where the existence, amount, validity and circumstances of an agreement about the payment of fees are at issue; but no communication is privileged under this subdivision when the same was made with the intention that it should be communicated to any person having an interest adverse to the client, or *when the same was made in furtherance of a crime or fraud then being perpetrated or in contemplation.* (Italics ours.)

3. (Treats of priest and parishioner.)
4. (Treats of physician and patient.)
5. (Treats of public officers and official business.)

From which it will be seen that the statute of Porto Rico is in touch with the advanced thought of the recent decisions on the subject.

Believing we have demonstrated that the testimony of Cornwell should not have been excluded on the ground of privileged communication, we will say a word upon the other objection, perhaps sufficiently interposed, that it was inadmissible because the other party had died meantime. Counsel who made this latter objection evidently had in mind the provisions of section 858 of the United States Revised Statutes as found in the printed volume, but that section had before this trial took place been amended by the act of Congress of June 29, 1906 (Stats. at Large, vol. 34, page 618), which changed it so as to read as follows:

> "SECTION 858. The competency of a witness to testify in any civil action, suit or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held."

Turning again, therefore, to the local law of evidence, above cited and quoted from, we find that such testimony is so clearly admissible under the provisions of sections 35 and 38 of that law as to require no further discussion.

From all the foregoing we submit, without further elabo-

ration, that the testimony of Cornwell, quoted at the beginning of the discussion of this point, was not only admissible and pertinent, but even in itself alone—as counsel admitted that whatever Mr. Cornwell should testify would be true (page 73)—sufficient to support a decree for complainants, at least as against all parties making the admissions.

That such would have been the effect of that evidence in the local courts of Porto Rico may be seen from the following decision of its Supreme Court:

> The facts found by the trial court were, that on Aug. 16, 1901, one Juan Maldonado made a deed of a tract of land to his son-in-law, Saturnino Sastre, reciting a consideration of $1,800 received *before* the execution of the deed; that before said conveyance Maldonado was indebted to the plaintiff, Alonso del Rio, on a promissory note for the sum of $674 to become due on Dec. 31, 1901; that in July, 1903, the creditor, del Rio, filed his suit alleging that said conveyance was simulated for the purpose of defrauding said creditor, as his debtor had no property left to satisfy the debt, which the court found to be true. The trial court adjudged said conveyance simulated and fraudulent because Maldonado had retained no property in his own name and had nowhere deposited sufficient money from the alleged proceeds of the sale to pay said debt, as required by the Military Order of March 20, 1899 (quoted under Point I).
>
> The Supreme Court of Porto Rico, upon the appeal of Maldonado from that decree, supplemented the findings of fact below by stating as proven that the existence of the debt of del Rio was not denied by any evidence, and that defendants had introduced no proof to show where Sastre got the $1,800 which he claimed to have paid Maldonado as the purchase price. After referring to these facts the Supreme Court recited and discussed the testimony concerning the admissions of Sastre in the following words:
>
> "Muy importantes son las declaraciones prestadas en el juicio oral por los testigos (tal y tal), de los cuales el primero dice que un dia estuvo Sastre en su

casa y le dijo que iba para Arecibo á recibir una escritura que habia de pasarle su suegro Maldonado para evitar que le perjudicara Don Alonso del Rio, pero que la finca que iba á recibir la reconoceria siempre como de Maldonado; el segundo que Sastre le manifestó que estaba asegurado como hijo politico de Maldonado por lo que pudiera ocurrirle luego; el tercero que Sastre fué con una máquina á su casa y le expresó que su suegro le iba á pasar su finca para evitar que le estafara Don Alonso del Rio, pero que siempre reconoceria esa finca como de su suegro; y el cuarto que Sastre le reurió que iba á recibir de Maldonado la escritura de la finca y que siempre reconoceria ésta como de Maldonado á pesar de estar á su nombre.

"Ante el resultado de las pruebas practicadas no vacilamos en calificar de simulado el contrato de compraventa celebrado por Don Juan Maldonado Rivera y su yerno Don Saturnino Sastre Suárez, pues las manifestaciones extrajudicialmente hechas por Sastre asi lo convencen y lo corrobora la falta de pruebas de que Sastre tuviera recursos para comprar la finca vendida."

Del Rio *vs.* Sastre, 2 Castro, Dec. de P. R., 551, 557.

(*Translation.*)

Especially important are the statements made at the oral trial by the witnesses (naming them), of whom the first says that one day Sastre was at his house and told him that he was on his way to Arecibo to receive a deed which his father-in-law, Maldonado, had to deliver to him in order that he might prevent Don Alonso del Rio from injuring him, but that the property which he was going to receive he should always consider as belonging to Maldonado; the second testified that Sastre stated to him that he was being made safe, as the son-in-law of Maldonado, against what might happen to him later on; the third, that Sastre went with some machine to his house and stated to him that his father-in-law was going to transfer his farm to him in order to avoid

being robbed of it by Don Alonso del Rio, but that he should always recognize the farm as belonging to his father-in-law; and the fourth, that Sastre informed him that he was going to receive from Maldonado a deed to the farm and that he should always regard the same as belonging to Maldonado, in spite of its being in his own name.

In view of the effect of the evidence produced, we do not hesitate in adjudging to be simulated the contract of purchase and sale entered into between Don Juan Maldonado Rivera and his son-in-law Don Saturnino Sastre Suárez, since the statements made extrajudicially by Sastre convince us of it, and it is corroborated by the lack of any proof that Sastre could have had resources to buy the property sold.

Point IV.

The testimony offered as to the admissions made by defendant Doitteau, after the conveyance was made, was admissible.

This refers to and covers the fifth assignment of error. Reference is made by that assignment to other testimony of the same witness Cornwell as to conversations with Carlos Doitteau, one of the original defendants and the second member of the firm of J. Tornabells & Co., who had also died before the trial was had. This testimony appears on page 83 of the record and was as follows:

> "I used to talk with Doitteau about it. Doitteau was a man I had considerable affection for, and I told him it was a queer kind of business for him to be in. He said he was the junior partner in the firm and was guided by Don Joaquin (Tornabells).
> * * *
> "He told me the nature of it just as they had there that day. I asked him where the notes were and he told me they were used for collateral purposes, I think to raise money on some of them."

The ruling of the court excluding this testimony was upon the same grounds as that relating to the conversation with Tornabells and is included in the extract from the judge's certificate quoted under the previous point (*supra*, page 41). The argument touching the previous point will, therefore, also apply to this one—with the difference that the conversation with Doitteau took place *after* the bill in the present equity suit was filed in which Mr. Cornwell was one of the counsel of record, hence with the knowledge on the part of Doitteau that he was talking to one of the attorneys of the opposite party therein.

Therefore the question of confidential communication could not be applicable, and the only objection to be considered must be whether the death of Doitteau should exclude it—the last question argued under the previous point.

Point V.

The testimony offered as to the admissions made by Inocencia Quevedo, widow of Tornabells, after she was a party defendant, was admissible.

This refers to and covers the sixth assignment of error. The court will note that, after the death of Tornabells, his widow and administratrix, Inocencia Quevedo, was made a party defendant and filed a full answer (pages 34-39).

The proceedings touching the admissibility of extra-judicial statements in the nature of admissions, made by her a few days before the trial, begin on page 74 of the record. Mr. Cornwell stated preliminarily that this lady came to his office (which was in the city of Mayaguez where all the parties lived) and wanted to talk about the case. At that point the objection was made that such evidence was inadmissible because it was hearsay, and for the further reason that the lady herself was within call. Counsel for appellants then called the attention of the court to the distinction

between a party to the cause and a mere witness. Counsel for appellees then entered the additional objection that its admission would be a violation of section 858, United States Revised Statutes. Counsel for appellants then stated that it was not claimed that these statements of this defendant would bind any other than herself and the minor children whom she represented. Finally the judge concluded to receive it in the same way he had the testimony about other conversations, reserving his ultimate decision until the final disposition of the case, which is recited in the certificate of the court (page 86) as follows:

> "And the court did further determine and rule that defendants' objection to the testimony of said witness Cornwell in so far as the same related to conversations between said witness and Inocencia Quevedo, the widow of Tornabells, should be sustained and said testimony excluded because it was the statement of a third party intended to impugn after the fact the *bona fides* of a transfer, the parties to which were dead at the time such testimony was offered and was at best hearsay, as said widow of Tornabells was still alive within the jurisdiction of the court and subject to be called as a witness if her testimony regarding such transaction would be admissible.
>
> "To which decisions and ruling of the court, rejecting and excluding the testimony aforesaid, the complainants by their counsel did then and there except."

The substantive part of this testimony of Cornwell regarding the admissions of this defendant is contained on page 76 of the record and is as follows:

> "Mrs. Tornabells came up in the office. She was accompanied by a sister of hers. She said she came to me to find out if there was any way we could help her out of her trouble.
>
> "I was rather surprised to see her there and I asked her if she knew we were the attorneys on the other side and she said she did, but that she was in a very difficult position and she wanted to know if we could not help her. I then called in Mr. Horton (his

then partner) and we explained that we were the attorneys on the other side of the case, but she could tell us anything she wanted to. She started in and said that before Joaquin died he owned lots of properties in the name of Luis Aran, and Mr. Aran had died and the succession of Aran would not turn her back her property; that she was without a cent now; and she began to enumerate all the properties in this bill which Joaquin owned. I asked her how she knew he owned them. She said he ran them all the time, had majordomos out there and owned them. And she wanted to know if there was some way that she could get something out of it for herself and children. I think it was two children, I don't remember the exact number. She said that they had nothing; she was without anything; that the Arans wouldn't now admit that the property belonged to Joaquin. She wanted to know if there was any way she could get back her property or part of the property and let the rest go to the creditors where it belonged. I told her we could not do anything at that time; that Judge Pettingill was the leading counsel in the case; that I would take the matter up with Judge Pettingill as soon as he returned—he had gone to the States. Then I think she came into the office every other day, crying and saying that this person knew and that person knew about what a great injustice had been done her. She said she didn't have any money left; that she was in a pitiable condition. She wanted to know if we couldn't get her the house she lived in on the Playa and I think the house where the sawmill was."

We have never understood the theory upon which the judge below excluded this evidence. It is so clearly admissible under sections 35 (2) and 38 of the Law of Evidence of Porto Rico hereinbefore quoted (page 50), that we shall content ourselves with citing authorities in support of the same, without further discussion.

United States *vs.* Wood, 14 Pet., 430.

Sonnenthiel *vs.* Moerlein Brewing Co., 172 U. S., 401, 415.

Tyler *vs.* Tyler, 126 Ill., 525.

Point VI.

The findings of fact are inconsistent with conclusions of law, and consistent only with granting relief.

The first and fifth conclusions of law were to the effect that, as complainants had failed to make out a *prima facie* case, their bill should be dismissed.

In the opinion of the judge, explaining why he reached that conclusion, he uses the following language:

> "If the contention that is insisted on by counsel for complainants with reference to the status of the pleadings is to prevail, then this (referring to the allegations of the bill and certain documentary evidence) is practically all the evidence there is in the case, and the court is forced to do its guessing from the largely unproved and unsworn to allegations of the bill, and the scraps of competent testimony introduced at the hearing. It is contended that because the bill is not sworn to and respondents did what would be called at law demurring to the evidence, that is, rested at the end of complainants' case, and refused to proceed further, that then even though Tornabells, Doitteau, and Aran have their own sworn answers in, and their widows later filed specific answers, the same cannot be considered for any purpose because not supported by oral proof, and that this condition of things simply obliges complainants to prove the several statements of their bill by one witness only in each instance. Complainants contend that they have done this, particularly if the evidence of one of their counsel, Mr. Cornwell, is admissable, and that in any event even without Mr. Cornwell's evidence, the exhibits and the other scraps of testimony make such a case of circumstantial evidence of fraud and throw such suspicion on the respondents as that the court is bound to enter a decree for complainants (p. 56).

* * * * * * *

"Without commenting on the sufficiency of this excuse (of defendants for not introducing evidence) under the peculiar circumstances of the case, we desire to state with reference to the testimony introduced by complainants that it is indeed meager and in the extreme unsatisfactory. In fact, during the hearing we at times were annoyed at the very evident appearance of fear or evasion shown by the witnesses called, and at other times felt a sort of sympathy for complainants in their efforts to bring out the truth, as we thought, against every obstacle that could be put in their way. This belief was strengthened when we noticed that several important witnesses were unaccountably absent and several others, instead of responding to process, sent in physician's certificates alleging their inability to be present. In spite of this feeling, a thorough examination of the record, and the cold law, in the light of all the surrounding circumstances, has driven us back to a consideration of the whole case from as impartial a point of view as we are capable of (p. 57).

* * * * * * *

"To tell the truth, complainants manifestly failed in their proof in this regard. Their testimony is so piece-meal, and so uncertain even when drawn from the witnesses introduced by a cross-examination by counsel for complainants who introduced them, and is in and of itself so unsatisfactory as a basis for asking a court to disturb a vast amount of title as to make us falter at the proposition, while at the same time it leaves in our mind an unsatisfied feeling as to the honesty of the transaction and the good faith of respondents" (p. 58, top).

From these quotations it would seem that the judge held it to be incumbent upon complainants not only to prove each and every allegation of their bill, whether vital or incidental, but also to prove them by evidence as direct and conclusive as in other classes of cases. Yet courts have always made a distinction in the character of proof required in cases involving fraud, holding that suspicious circum-

stances should be carefully considered, as fraud is always a creature of darkness and secrecy, and where the proof of complainants, circumstantial though it may be, leads to doubt of good faith, defendants should be required to offer explanatory proof or suffer the doubt to turn into a presumption against them.

Crawford *vs.* Neal, 144 U. S., 585, 595.
Schaferman *vs.* O'Brien, 28 Md., 365.
Beidler *vs.* Crane, 135 Ill., 92, 98.
Leeper *vs.* Bates, 85 Mo., 224.
Dabezies *vs.* Barthe, 104 La., 781.

Notwithstanding the opinion of the judge that complainants' proof was fragmentary and unsatisfactory—"scraps," as he called it—the findings subsequently made (pp. 67-69) include the following facts:

The ninth finding states that the indebtedness of Tornabells and Co. to complainants existed before the alleged fraudulent conveyance was named.

The second finding states that defendants elected at the conclusion of complainants' evidence to stand upon its alleged insufficiency and not to introduce evidence in their own behalf.

The fourth and fifth findings state that the conveyance in controversy was made by Tornabells & Co. to Aran for a consideration of 197,700 pesos, which was to be paid about fifteen per cent in cash and the balance in equal yearly installments extending over ten years without interest and without security for its payment, and that the conveyance covered practically all the assets of the grantor firm.

The sixth and seventh findings state that nine days after the above conveyance Aran made two mortgages on the bulk of this property for an aggregate sum of 150,000 pesos, of which 130,000 were payable in ten annual installments of 13,000 pesos each, for which notes were given by Aran in favor of Duran, who was a cousin of Tornabells.

This mortgage was recorded May 24, 1900 (finding 8), while the anterior deed from Tornabells to Aran was not recorded until the 31st day of August thereafter (Opinion of Judge, p. 51, 3d par.).

The tenth finding states that, although Aran had on or before September 13, 1901, obtained a receipt in full from Tornabells and Co., for the payment of the purchase price which was to run ten years (Opinion of Judge, p. 51, 4th par.) he executed a mortgage on a part of this same property in June, 1902, to secure to the Banco de Soller the payment of an old debt of Tornabells & Co., for 32,780 pesetas (6,556 pesos), but declined to assume any personal liability for the payment of the same.

The eleventh finding states that in 1903, Aran was in possession of some of the mortgage notes which he had given Duran, and which were not yet due; that Aran used said notes as collateral with the defendant firm of Fritze, Lundt & Co., for his account with them for supplies furnished for the cultivation of this same property which previously belonged to Tornabells & Co.; and that when this account amounted to $16,600 that firm took a mortgage on one of the properties involved in this controversy and turned the notes back to Aran. In this mortgage also Aran stipulated that he should not be personally liable for the debt.

The twelfth and thirteenth findings cover two other transactions involving portions of the property in controversy, in neither of which did the notary signing the deed certify to any money having been paid in his presence—therefore said deeds were not even *prima facie* proof that any consideration had really been paid.

Upon these findings we submit the following propositions:

First. The fact that the conveyance to Aran included practically all of the assets of the firm of Tornabells and Co. differentiated the transaction from any in the ordinary course of business, and hence was *prima facie* proof of a fraudulent intent on the part of both parties thereto, and

it was the duty of the court upon finding that fact alone to grant complainants relief.

Walbrun *vs.* Babbit, 16 Wall., 677.
Dent *vs.* Ferguson, 132 U. S., 50, 62.
Judson *vs.* Currier Co., 15 Fed. Rep., 541.
Chevalier *vs.* Commins, 106 Cal., 580.
Note, subd. VII, 32 L. R. A., 33, 58.

This court said in the case of Walbrun *vs.* Babbit, *supra:*

> "But it is wholly a different thing when he sells his entire stock to one or more persons. This is an unusual occurrence, out of the ordinary mode of transacting such a business, is *prima facie* evidence of fraud, and throws the burden of proof on the purchaser to sustain the validity of his purchase" (citing authorities).
>
> "The presumption of fraud arising from the unusual nature of the sale in this case can only be overcome by proof on the part of the buyer that he took the proper steps to find out the pecuniary condition of the seller. All reasonable means, pursued in good faith, must be used for this purpose."

Second. The conveyance being thus presumptively fraudulent between the parties, any subsequent purchaser or party acquiring an interest in property so conveyed has the burden of proving by affirmative evidence the *bona fides* of his title or interest.

Crawford *vs.* Neal, 144 U. S., 585.
Callan *vs.* Stathan, 23 How., 477, 480.
Nickerson *vs.* Meecham, 14 Fed. Rep., 881, 885.
Bartles *vs.* Gibson, 17 Fed. Rep., 293, 297.

Third. The defendants having introduced no affirmative evidence, and the character of the conveyance making it presumptively fraudulent, the finding by the court that the deed recited a full consideration will not warrant the conclusion that the transaction was valid. Where the con-

sideration is attacked for fraud the recital in the deed is not sufficient evidence thereof.

Coal Company *vs.* Doran, 142 U. S., 417, 438.

This court in the above case used the following language:

> "The coal company insists, however, that it occupies the position of a *bona fide* purchaser for value without notice, and as such is entitled to the protection of the Court. No evidence whatever was adduced on behalf of the defendant, and although George W. Belcher, N. L. Reynolds and P. H. Rorer answered under oath, they were not required to do so, and their answers were not evidence in their favor, under the amendment to the 41st rule in equity. * * * None of the original deeds in appellant's chain appear to have been produced on the hearing, though certified copies were attached to the pleadings, but no independent evidence was adduced of the payment by any of the defendants of any money whatever. As against complainant the recitals in these deeds cannot be relied on as proof of the payment of the purchase money (citing several cases). Apart from this we hold appellant chargeable with notice," etc.

Fourth. The fraud in the transaction being proven, not even the actual payment of full value will protect a purchaser unless he also prove his *bona fides.*

Clements *vs.* Moore, 6 Wall., 312.

Morrow Shoe Co. *vs.* N. E. Shoe Co., 6 C. C. A., 508, 520.

Moore *vs.* Crawford, 130 U. S., 122.

Note, subd. III, 32 L. R. A., 33, 40.

In Clements *vs.* Moore, *supra,* this court said:

> "The cardinal principle in all such cases is, that the property of the debtor shall not be diverted from the payment of his debts to the injury of his creditors, by means of the fraud."

Fifth. The findings as to the subsequent conveyances of the property in controversy by Aran show sufficient to convince any court that at least some of said conveyances were made for the benefit of the firm of Tornabells & Co., presumably to buy off certain creditors who had too much knowledge of the real transaction, and were threatening to make trouble.

The transactions with Banco de Soller and Fritze, Lundt & Co. both appear to have involved the settlement of the claims against the old firm, although Aran was supposed to have closed up his transaction with Tornabells in September, 1901, while these transactions were practically one and two years subsequent thereto; and the refusal of Aran to assume personal liability is very significant.

The fact that Aran in the latter transaction was using some of the notes which he was supposed to have given Duran, although such notes should have been cancelled if he had really paid them off, is also very instructive.

Sixth. By the weight of authority, the fact that the sale was not for cash, but on long time and without security also in itself makes it presumptively fraudulent.

Point VII.

The decree of the court below should be reversed and the cause remanded with directions to enter a decree for complainants.

We contended below upon the pleadings and evidence, and we contend here upon the pleadings and findings, that the court committed each error assigned. But by the commission of any one of the stated errors the complainants were vitally prejudiced, and the decree should be reversed.

Respectfully submitted,

Frederick L. Cornwell,
N. B. K. Pettingill,
Counsel for Appellants.

WILL *v.* TORNABELLS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 63. Submitted December 10, 1909.—Decided March 14, 1910.

Findings of the lower court will not, where another construction is possible, be so construed as to cause them to be silent on an issue so controlling that the cause could not have been decided on the merits without a finding thereon.

Where findings are so irresponsive to the case made by the pleadings and the facts as to be no findings at all this court must affirm on account of absence of any findings to review. *Gray* v. *Smith*, 108 U. S. 12.

A finding that the evidence does not entitle the plaintiff to a decree that the conveyance attacked was made to hinder and delay creditors construed in this case to mean that there had been a failure of proof and that the judgment did not rest on a conclusion of law that the local law did not afford a remedy if the plaintiff had proved his case.

Under the law of Porto Rico contracts made by an insolvent debtor which are not fraudulent simulations are not susceptible of rescission merely because they operate to prefer a creditor.

While the privilege of communication may not extend to the concealment of crime, where an attorney testifies that the vendor disclosed

[1] For proceedings on settlement of decree and final decree, see p. 000, *post.*

to him a plan to make fraudulent conveyances to hinder and delay creditors, but the court finds that the conveyances as made were not under the local law illegal, the testimony is properly excluded, as there is no sufficient foundation to relieve the witness from the professional obligation of secrecy.

The statements made by the widow of the vendor whose conveyances were attacked to the effect that such conveyances were fraudulent were properly excluded in this case by the lower court.

THE facts are stated in the opinion.

Mr. Frederick L. Cornwell and *Mr. N. B. K. Pettengill* for appellant.

No brief was filed for appellees.

MR. JUSTICE WHITE delivered the opinion of the court.

This appeal is taken to secure the reversal of a decree of the court below dismissing the bill of complaint. The court sustained its action by an elaborate opinion, and subsequently stated, in a formal way, its findings of fact and conclusions of law.

The evidence is not in the record, although a portion of the testimony is contained in the formal findings of fact, upon the theory that this was necessary to preserve the right to review the action of the court concerning objection urged by the defendants to the admission of certain testimony tendered on behalf of the complainants. The record, we are constrained to say, is unsatisfactory and confused, a condition which we assume has resulted from circumstances referred to by the court below in the opening passage of its opinion, as follows (3 Porto Rico, 125, 126):

"This is a creditors' bill filed June 23, 1902, and permitted to remain on the docket of this court during the five years that have since intervened, without any apparent proper or sufficient cause for the unwarranted delay and with infinite inconvenience to many parties connected with the subject-

matter of the controversy. The first two years and a half of the time seem to have been taken up with a battle over the proceedings, trying to get the answers of the several respondents settled, and during which time complainants' exceptions to several of the answers were referred to a master, arguments had before him, his report filed, exceptions to the same presented, arguments had on the latter and briefs submitted in support thereof, and so on, in an interminable and fruitless contest of petitions, motions, exceptions, pleas, demurrers, orders, affidavits and rules to show cause, without result or real merit as we see it. The next year and a half seem to have been taken up somewhat in the same way, and also partly in an application for a receivership and in opposing efforts to the same, and in efforts to prevent outside parties from foreclosing several mortgages they had on some of the premises involved, that they had secured in the meantime, in enjoining them from so proceeding and in issuing rules as for contempts against them for their actions in that behalf, etc."

In order to in some measure dispel the obscurity which must arise from the circumstances just referred to we briefly state, in their chronological order, certain unquestioned facts which gave rise to the controversy, and also outline the pleadings and proceedings, the whole for the purpose of enabling us to adequately test the sufficiency of the errors assigned.

For many years the firm of J. Tornabells & Co., composed of Joaquin Tornabells and Carlos Doitteau, was established in Porto Rico and there carried on a mercantile business. The firm was the owner of various trading establishments and warehouses, and was, besides, the owner of considerable real estate, embraced in which were extensive coffee plantations which the firm carried on, including the buildings, machinery and appurtenances incident thereto. It is not disputed that, presumably as the result of losses occasioned by a disastrous hurricane which devastated the island of Porto Rico the firm, prior to 1900, had become temporarily embarrassed, and, under provisions of the local law, had obtained in a local court

an extension of time for the payment of its debts. While we state the fact as to the suspension we shall nevertheless indulge in the assumption that such fact has no material bearing upon the questions here to be decided. We do this because no rights based upon such fact were asserted in the bill of complaint or passed upon by the court, and no right of such a character is asserted in the assignments of error or referred to in the elaborate argument filed on behalf of the appellants, the appellees not having appeared in this court either orally or by brief.

On May 9, 1900, Tornabells & Co., by deed before a notary public, conveyed to Luis Aran y Lanci the following property, as stated by the court below: "Its place of business and other town property, its stock of merchandise and twenty-six several pieces of real estate, most of them being coffee plantations and their appurtenances." The stated price was 197,700 pesos, provincial money, 30,000 declared to have been paid in cash, and the remainder to be paid in ten installments of 16,700 pesos, bearing no interest, maturing respectively from one to ten years. A few days thereafter, on May 11, 1900, Aran y Lanci mortgaged for 150,000 pesos nineteen of the twenty-six pieces of real estate thus conveyed to him. This mortgage was in favor of one Baudelio Duran y Cat and a firm styled Duran & Coll. The mortgage in favor of the first was for 130,000 pesos, divided into ten annual installments of 13,000 pesos each, evidenced by notes to the order of the mortgagee, maturing in each of the ten years, the whole being secured on fourteen of the twenty-six pieces of real estate. The mortgage in favor of Duran & Coll was on five of the pieces of real estate acquired as aforesaid, and secured twenty thousand pesos, divided into five installments of four thousand pesos each, maturing in each of five years. These mortgages were not indivisible, as the amount of each was apportioned among the various pieces of real estate, so that each piece was liable only for the sum secured on it. The sale to Aran y Lanci was recorded on May 21, and the mortgages just stated

on May 24, 1900. On June 25, 1900, the mortgage for 20,000 pesos, which had been executed in its favor by Aran y Lanci, was assigned by the firm of Duran & Coll to Raimundo Valdecillo to secure an indebtedness due him by the firm of 6,000 pesos provincial money, and this assignment was duly registered on July 5, 1900. Sixteen months after the conveyance to Aran y Lanci—that is, on September 16, 1901—the firm of Tornabells & Co. acknowledged by notarial act that Aran y Lanci had by anticipation fully paid the deferred purchase price (167,700 pesos). Nine months after such acknowledgment Aran y Lanci mortgaged in favor of the Banco de Solleir to secure 32,780 pesetas, Spanish money, one of the pieces of property previously mortgaged to Duran y Cat. On July 5, 1902, this mortgage was put upon record. A few days after it was so put upon record, viz., on June 23, 1902, the suit before us was commenced.

The bill—which was not sworn to—was originally filed on behalf of three commercial firms, Will & Co. of Cuba, David Midgley & Sons of Manchester, England, and Ramon Cortado & Co. of Ponce, Porto Rico, and the members of said firms, in their own behalf and in behalf of all others similarly situated who might intervene in the cause. It was alleged that the complainants were creditors of the firm of Tornabells & Co. at the time of the conveyance to Aran y Lanci and the execution of the mortgages by Aran y Lanci above recited, and that subsequent to said transactions the claims of the complainants had been merged into judgments against the firm, obtained in the court where the bill was filed, and that on such judgments executions had issued and been returned unsatisfied. It was further alleged that the conveyance made by Tornabells & Co. to Aran y Lanci, and the mortgages put by the latter upon the property in favor of Duran y Cat, and the firm of Duran & Coll, were fraudulent simulations, and that the property covered by the conveyance and the mortgages continued to belong to the firm, and was held by Aran y Lanci under a secret trust in favor of Tornabells & Co., the con-

veyance and mortgages being mere fictitious devices adopted between the parties for the purpose of screening the property from creditors or hindering and delaying them in the recovery of their claims. It was further charged that at the time of the transactions referred to Tornabells & Co. was insolvent, that the alleged price mentioned in the conveyance to Aran y Lanci was largely below the real value of the property, and that, despite the alleged conveyance and mortgages, the firm of Tornabells & Co. continued to control the property conveyed and enjoy the fruits thereof. The prayer of the bill in substance was that a receiver of the property might be appointed, that the conveyance and subsequent mortgages and transfers should be declared to be fraudulent and void and be vacated and annulled, and that the property and each and every parcel thereof should be decreed to be subject to the lien of the several judgments. Tornabells and Doitteau, the members of that firm, Aran y Lanci, Duran y Cat, and Duran & Coll, and the members of that firm, were made defendants to the bill. Valdecillo, to whom the mortgage executed by Aran y Lanci in favor of Duran & Coll had been assigned, was also joined as defendant, he being called upon to establish the verity of his alleged lien. Alfredo Saliva, who was alleged to be the attorney in fact of and to have acted for Aran y Lanci in the transactions set out in the bill, was also made a defendant.

Separate sworn answers were filed on behalf of the members of the firm of Tornabells & Co., traversing the allegations of insolvency and of simulation and fraud, both as respected the conveyance to Aran y Lanci and the mortgages executed by the latter. The answers contained affirmative allegations as to the good faith of the conveyance to Aran y Lanci, the adequacy of the consideration and full payment thereof prior to the commencement of suit. The taking possession by and the exclusive control and management of the property conveyed, and receipt of the fruits thereof by Aran y Lanci for his exclusive use and benefit was also averred. An answer

substantially of like tenor, also sworn to, was filed on behalf of Aran y Lanci. Juan Coll, a partner in the firm of Duran & Coll, also answered, and averred the *bona fides* of the mortgage executed by Aran y Lanci to his firm and the transfer thereof made to Valdecillo.

On October 31, 1904, the firm of L. W. & P. Armstrong of New York City, unsecured creditors of Tornabells & Co., were made parties complainant to the bill. Thereafter, Ruffer & Sons, a firm doing business in London, England, and the Caja de Ahorros de Mayaguez, a Porto Rican corporation, as creditors of Tornabells & Co., were also allowed to intervene and become parties complainant.

Early in 1905 Tornabells died and the cause was revived as to him against his widow and children as his heirs. In November of the same year Aran y Lanci died, and the cause was revived against his widow, as administratrix of his estate. Doitteau, the surviving partner of Tornabells & Co., died on January 22, 1907, and the cause was revived against his widow and children.

Duran y Cat, an original defendant to the bill—in whose favor, as we have stated, Aran y Lanci had mortgaged fourteen of the pieces of real estate for 130,000 pesos—was not served with process and did not enter his appearance. He also died during the pendency of the cause. On February 12, 1907, upon motion of the complainants, an order was entered dismissing the cause as to the heirs of said Duran y Cat, "on the ground that said heirs, being out of the jurisdiction and having entirely disposed of their interest in the cause, are not indispensable parties thereto."

Journal entries are contained in the record, showing that more than a dozen firms or individuals became additional defendants in the cause. The time when they came in and the nature of the pleadings by them filed or the proceedings had concerning their rights do not distinctly appear. It is, however, fairly inferable that these new defendants came in long after the commencement of the suit, either during or

subsequent to the dilatory and confused proceedings referred to by the court in the excerpt heretofore made from its opinion, and that such defendants asserted rights claimed to have been acquired, after the filing of the bill, in the property affected by the suit, either as purchasers or as holders of mortgage notes. In this connection it is to be observed that neither when the suit was commenced nor at any time during its progress was the court requested by the complainants to award a cautionary notice, to be placed upon the public records, as a means of warning to parties who might deal with the property in controversy, thus preserving against them, *pendente lite*, the rights which might be ultimately established as existing in the complainants, and which would not have been preserved by the mere pendency of the suit, unaccompanied with the allowance and registry of the statutory cautionary notice.

Answers or amended answers were filed on behalf of the widow and administratrix of Tornabells, and by the guardian *ad litem* who was appointed for his minor children. An answer was also filed on behalf of the widow and administratrix and minor children of Doitteau. This also was the case as to the widow and administratrix of Aran y Lanci. These various answers were substantially in accord with those which had been previously filed on behalf of the original defendants, except that in one of them the prescription of one year was pleaded. It is inferable from the record that at this stage of the proceedings, or at all events at a time not earlier than four years after the commencement of the suit, certain persons who had acquired rights in or to the property, either directly from Aran y Lanci or through the mortgage executed in favor of Duran y Cat and Duran & Coll, sought to enforce their claims and were enjoined from so doing. At about the same time a receiver was appointed. The record is silent, however, as to whether the receivership was intended to apply to all the property in controversy or whether the receiver attempted to take possession under his appointment, although it would seem that to some extent he did so, since by the

final decree the receiver was ordered to settle his accounts, etc.

It came at last to pass in the spring of 1907 that the cause was heard and taken under advisement. It was disposed of in the summer of that year by the entry of a final decree dismissing the bill, and was followed nearly six months thereafter, on December 19, 1907, by the making of formal findings of fact and conclusions of law applicable thereto.

The facts found are embraced in fourteen numbered paragraphs. The first merely states in general terms the filing of the bill, makes allusion to the complicated proceedings which followed, the dismissal as to some of the defendants (presumably the heirs of Duran y Cat), the coming in of other parties, the ultimate joinder of issue and the submission of the cause. In the second is stated the fact that evidence was heard on behalf of the complainants and the submission of a motion for a decree dismissing the bill on two grounds, viz., the failure to prove the allegations of the bill and the prescription of one year. The third finding is as follows:

"3. The documentary evidence introduced on behalf of complainants and the testimony of all the witnesses do not prove the allegations of the bill so as to entitle the complainants to a decree in their favor declaring the conveyance from defendants Tornabells & Co. to defendant Aran, and the mortgage from defendant Aran to defendants Duran y Coll and Duran personally to be voluntary or made to hinder and delay the complainants in the collection of their debts."

The fourth, fifth, sixth, seventh, eighth and ninth paragraphs, in a summary way, find substantially, as we have stated them, the facts concerning the conveyance by Tornabells & Co. to Aran y Lanci, the execution of the mortgages in favor of Duran y Cat and Duran & Coll, and the divisibility of those mortgages, as well as the fact that the claims upon which the complainants sued, although in existence, were not reduced to judgment until some time after the execution of the conveyance and mortgages in question. In

one of the paragraphs it is stated that the property conveyed by Tornabells & Co. was substantially all that was owned by the firm at the time of the conveyance, and that Duran y Cat was a relative of the senior member of Tornabells & Co. By the tenth paragraph it is found that the mortgage asserted by the Banco de Sollier was one which Aran y Lanci had executed in favor of that bank on one of the properties acquired by him from Tornabells & Co., and was given to secure a debt due by that firm to the bank, that Aran y Lanci incurred no personal responsibility, and that he produced, as paid, the mortgage note identified with the act of mortgage executed in favor of Duran y Cat, which had been released or extinguished so far as the particular property was concerned. The eleventh paragraph stated that the mortgage asserted by the firm of Fritze, Lundt & Co., on one of the pieces of property conveyed to Aran y Lanci, was executed by the latter in favor of Fritze, Lundt & Co. to secure the payment of a current account for supplies furnished for the cultivation of properties included in the conveyance from Tornabells & Co. to Aran y Lanci, and that previous to the giving of the mortgage the advances made by the firm were secured by a pledge of one of the mortgage notes executed by Aran y Lanci in favor of Duran y Cat, which, when Aran y Lanci mortgaged the property in favor of the firm of Fritze, Lundt & Co., was produced by him as the owner thereof and cancelled. In this case, also, no personal responsibility was assumed by Aran y Lanci. The twelfth and thirteenth paragraphs state sales by Aran y Lanci, in 1903 and 1905, to named persons, of pieces of the property acquired by him from Tornabells & Co., and the production by Aran y Lanci, as extinguished and paid, of the mortgage notes resting upon the property so conveyed, identified with the mortgage in favor of Duran y Cat. The fourteenth paragraph simply embraced a general statement of the release of the Duran y Cat mortgage on the properties referred to in the tenth to the thirteenth paragraphs, inclusive, and that the mortgages and conveyances referred to in

such paragraphs "were, in each and every case, duly recorded in the Registry of Property prior to any record in the Registry of Property of the judgments obtained by complainants herein against Tornabells & Co., referred to in paragraph nine."

From the facts thus found the court drew the following conclusions of law:

"1. That the proof on behalf of complainants is not sufficient to entitle them to any relief under their bill of complaint.

"2. That there is not now, and never was, any such statute in Porto Rico as the statute of 13th Elizabeth in England, referring to fraudulent conveyances, because we have the civil law rule here instead of the common law. Every State in the Union has a reënactment of the statute of Elizabeth in some form or other among its laws. In the absence of it there is no rule of law preventing a debtor, even when insolvent, for even that does not take from him the power of disposition of his property, and paying his debts with it, or a portion of his debts, and preferring one or more of his creditors with absolute intent to hinder, delay or even to defeat other creditors. If the favored creditor receives no more than is due him, and permits the debtor to secure no advantage to himself, the transaction will be upheld.

"3. That the statute of limitations of one year, as fixed by article 37 of the mortgage law, is applicable to suits like the one at bar.

"4. That complainants, under the pleadings and proofs herein, are not entitled to subject the properties described in the bill of complaint herein to any lien, interest or decree, by which the complainants would be entitled to have the conveyance and mortgages described in said bill of complaint cancelled and annulled for the benefit of the said complainants.

"5. That the bill of complaint should be dismissed."

These conclusions were followed by the reproduction of portions of the testimony to preserve the right to review cer-

tain rulings of the court respecting testimony offered on behalf of the complainants.

The assignments of error are seven in number. The seventh we at once put out of view, as it only charges generally that the court erred in dismissing the bill of complaint.

The sixth, fifth and fourth assignments concern rulings as to the admissibility of testimony, and the third complains of the action of the court maintaining the plea of prescription of one year. As these assignments cannot be disposed of without in some respect appreciating the merits, we temporarily forego considering them.

The remaining assignments, that is, the first and second, are as follows:

"First, the court erred in finding as matter of law that in Porto Rico there was no rule of law preventing a debtor, even though insolvent, from preferring one creditor over others with absolute intent to hinder, delay or even defeat the just claims of said others.

"Second, the court erred in finding as matter of law, from the facts found, that the above rule of law was applicable and in not finding as matter of law that the applicable rule was that a debtor could not transfer his property without any consideration for the purpose of delaying or defeating the just claims of his creditors."

It is apparent that these propositions assert that a twofold error was committed, first, in not applying to the facts as found the legal principle rightfully applicable; and, second, by erroneously stating the law in the irrelevant proposition which was mistakenly applied in deciding the cause. The first contention rests upon the theory that the facts found established that the conveyance and mortgages which the bill assailed were mere fraudulent simulations, and upon this assumption insists that the case should have been controlled by the law applicable to that state of fact instead of being governed, as it was, by considering how far, as a matter of law, a debtor, being insolvent, had a right, through a real and

bona fide transaction, to prefer one or more of his creditors. But when the findings of facts are considered it is manifest that the premise upon which the proposition rests is a false one, since it cannot be indulged in without disregarding the findings. We say this is manifest, because the third finding of fact, which we have already quoted, expressly declares that the documentary evidence introduced on behalf of the complainants and the testimony of all the witnesses did not establish that the conveyance from Tornabells & Co. to Aran y Lanci and the mortgage made by him to the firm of Duran & Coll and to Duran y Cat individually were "voluntarily made to hinder and delay the complainants in the collection of their debts." The error which would have resulted from applying the doctrine applicable to a mere simulated transfer to a case where the findings established that simulation was not shown is self-evident. This result, which necessarily arises from a consideration of the mere text of the third finding, is also demonstrated, if that finding be contemplated in the light of the issues which the cause presented in connection with the other findings and all the conclusions of law which were deduced therefrom and applied in deciding the cause. The essential charge which the complaint made was the fraudulent and simulated character of the conveyance and mortgages which were assailed. That issue was, therefore, the controlling question to be decided. Considering the findings, as we have previously fully stated them, it is, we think, clear that the third finding was intended by the court as a statement of its conclusion of fact as to that controlling issue, and that the first conclusion of law which the court stated, that is, the insufficiency of the proof to justify recovery by the complainants, was intended as the legal resultant of the finding which had established that there had been a failure to prove the charge of simulation.

We think it is also clear that the second proposition of law which the court announced, that is, the right of a debtor under the Porto Rican law, although insolvent, to give a

preference, in no way detracted from or modified the previous finding and conclusion as to the absence of proof of simulation or purpose to hinder and delay creditors in the conveyance from Tornabells & Co. to Aran y Lanci and the Duran y Cat and the Duran & Coll mortgage, but was solely intended as responsive to the findings in other respects. That is to say, we think the second finding of law was responsive to the facts found in the paragraphs other than number three, which tended to establish that, even although the sale from Tornabells & Co. to Aran y Lanci was not simulated and not intended to hinder and delay creditors, nevertheless Aran y Lanci had discharged a portion of the credit price which he had agreed to pay by making payments to third persons, creditors of the firm of Tornabells & Co., in extinguishment of the indebtedness of the firm to such creditors, and thus to the extent of such payments preferring the creditors paid out of the price due to Tornabells & Co. as the result of the sale.

Indeed, unless the appreciation which we have just made of the findings and the conclusions of law deduced therefrom be correct, it would cause the findings of fact to be absolutely silent on the issue of simulation, although that issue was the controlling one in the cause, an issue indeed so essential that it is impossible to conceive that the cause could have been disposed of on its merits without a finding on the subject. But if the findings could be thus envisaged the inquiry would be at once suggested whether they were not so manifestly irresponsive to the case as made by the pleadings and to the facts necessarily involved in the decision rendered as to cause them to be no findings at all, and therefore to require at our hands an affirmance of the judgment because of the substantial absence of any finding to enable us to review. *Gray* v. *Smith*, 108 U. S. 12. Concerning this suggestion, however, we express no opinion, since we do not consider that the findings are of the unsubstantial and irrelevant character which would result from attributing to them the construction contended for by the appellants.

Our conclusion that the findings of fact exclude the contention concerning the simulated character of the assailed contracts renders it unnecessary to review the authorities cited in argument to establish the proposition, which is not challenged, that under the law of Porto Rico creditors possess the right to set aside mere fraudulent and simulated contracts or conveyances made by their debtor to or in favor of an interposed person, in order to place the property of the debtor apparently in the name or under the control of such person for the purpose of defeating creditors.

The substantial foundation upon which the cause was based, that is, the issue as to the simulation of the conveyance to Aran y Lanci and the mortgage to Duran y Cat and the firm of Duran & Coll being disposed of, the remaining contentions are free from difficulty. We say this because, although it is elaborately insisted that putting the question of simulation out of view, the court was wrong in its second legal conclusion, to the effect that the law of Porto Rico did not avoid a real and otherwise valid contract merely because its result was to prefer one or more creditors of the debtor making the contract, we think such contention is shown by the record to be an afterthought, or if not is unsupported by the provisions of law which are cited to maintain it. An afterthought because the entire theory of the bill was opposed to the conception that the assailed transactions merely embodied preferences giving rise to a revocatory action that is merely to have an otherwise valid contract revoked. Indeed, it is difficult to imagine that the action in any aspect was considered as but revocatory in character when it is borne in mind that although the mortgage in favor of Duran y Cat covered fifteen pieces of real estate securing 130,000 pesos, he was not served with process, and after his death, on motion of the complainants, the cause was dismissed as to his heirs, upon the theory that they had no interest in the result. We say that the contention as to preference, if not an afterthought, is unsupported by the provisions of law relied upon,

since those which are referred to plainly relate to cases of simulation, and even if applicable to a question of preference, tend to support the view stated by the court in its second conclusion of law. For instance, the military order of March 5, 1899, deals but with simulated transfers, and when its context is considered we think also concerns alone sales made seemingly for cash, and therefore, for a twofold reason, is inapposite to the question of mere preference arising from a contract for a legal consideration, although not immediately payable in cash. So also the general provisions of article 1101 of the Civil Code, providing that those who fraudulently neglect to fulfill their obligations are liable in damages, those of article 1275, declaring that contracts without a consideration or with an illicit consideration can have no legal effect, and the terms of article 1276, providing that the statement of a false consideration in contracts shall render them void unless it be proven that they were based on another and licit consideration, may be put out of view, since they simply announce undisputed propositions of law which are not involved in the case before us, and which are not disputed by any one. And a like reason is also adequate to dispose of the contention based upon the third paragraph of article 1291 of the Civil Code, which embraces in the enumeration of contracts which may be rescinded "those executed in fraud of creditors when the latter cannot recover in any other manner what is due them." We say this, since this provision clearly limits the right of the creditor to rescind to cases where he cannot otherwise recover his debt without resorting to an action for rescission, and even in such case only confers such right where the contract sought to be rescinded is one which is in fraud of his rights. To contend, as is in effect done in the argument at bar, that the article gives to a creditor a right to sue to rescind any contract made by his insolvent debtor, simply because without rescission the creditor cannot otherwise recover his debt, is to distort the clause by misconceiving its obvious meaning. The power to seek rescission being thus

limited to contracts which are in fraud of the rights of the creditor, the question is, Did the court below err in holding that under the law of Porto Rico contracts made by an insolvent debtor which were not fraudulent simulations, because made upon adequate consideration, are not susceptible of being rescinded merely because their execution operated a preference in favor of a creditor? We are cited to no express provision of the local law, or referred to any decision so interpreting that law, and we think an analysis of the provisions of the local law relied upon for the purpose of inferentially showing that the court below erred, clearly not only do not support but refute the contention we are considering. Thus the provision expressly authorizing the right to rescind payments made by an insolvent debtor on account of obligations which, at the time of making the payments, the debtor could not be compelled to make (Civil Code, art. 1292), plainly import the validity of such a payment under other circumstances. So, also, the provision creating a presumption of fraud as to alienations for valuable consideration made by an insolvent debtor against whom a condemnatory judgment has been rendered or a writ of seizure of property has been issued (Civil Code, art. 1297), also gives rise to the inference that where these circumstances do not exist the contrary rule would apply. And the inferences which are deducible from the text of the code are cogently fortified by a consideration of the mortgage law. Thus, while the law contains an enumeration of the suits which may be brought for the rescission of conveyances made for the purpose of defrauding creditors, and includes those made without consideration when the third person was a party to the fraud (Mortgage Law, arts. 36 and 37), it does not mention the case of a mere preference resulting from a contract made for an otherwise valuable consideration. So, also, in article 39, the conveyance without consideration to defraud creditors is expressly limited to those where "there was no price or its equivalent, or any preëxisting obligation which had fallen

due," an affirmative prohibition which would seem necessarily to exclude a right to rescind a contract because of mere preference where there was a price or its equivalent, or where the consideration was a preëxisting obligation which had fallen due.

The foregoing considerations cause it to be unnecessary to pass on the error which it is alleged was committed in maintaining the plea of prescription of one year. It remains therefore only to dispose of the errors based upon the action of the court in disposing of objections to testimony. They relate to two subjects, the first to objections made to the admissibility of the testimony of Mr. Cornwell, one of the attorneys of record of the complainants, concerning statements made to him by members of the firm of Tornabells & Co. in reference to their intention to dispose of or mortgage their property, and the other to the testimony of the same witness concerning statements made to him by the widow of Tornabells after the death of her husband, and during the pendency of the cause, as to alleged conversations had by her with her husband tending to show the simulation of the contracts which were assailed. To pass upon the contentions on these subjects a statement of what transpired at the time the evidence in question was proffered and of the action of the court thereon is essential. While testimony was being taken in open court Mr. Cornwell, one of the attorneys for the complainants, was offered as a witness on their behalf. It developing at once from the questions put to him that the purpose was to draw from the witness statements made to him by the members of the firm of Tornabells & Co. shortly before the assailed conveyance and mortgage were executed, objection was made that such statements were incompetent, because at the time they were made Cornwell was the attorney for the firm and its members, and therefore the statements were not admissible because privileged communications. Thereupon the examining counsel, while not denying that at the time the statements were made the relation of attorney and client existed, insisted that the

statements were admissible, because their character was such as to cause them to be outside of the privilege. The court declaring that it would reserve its ruling on the objection until it had an opportunity to examine the subject during the noon recess, the examination of the witness proceeded for the purpose of showing his professional relation to the firm of Tornabells & Co. at the time of the making of the statements. When the court convened after the recess the subject of the admissibility of the offered testimony was at once taken up. The court intimating doubt on the subject, the counsel making the objection declared that he had witnesses present by whom he expected to prove that Mr. Cornwell not only was the confidential legal adviser of Tornabells & Co. at the time the statements were made to him concerning which it was desired to question him, but that he continued to act for that firm as their attorney after the assailed contracts were made up to the time of the bringing of this suit. Answering this statement, the counsel for complainants declared that his position was that the offered proof was irrelevant in view of the ruling in *Dent* v. *Ferguson*, 132 U. S. 50, to the effect that the privilege did not extend to statements made by a client to his attorney of the intention of the client to commit a fraud. The court then announced as follows: "I am going to permit Mr. Cornwell to testify, reserving the right to see what it is, giving to all the counsel a right to except." Upon this announcement counsel for the defendants insisted upon being permitted to call witnesses to establish the existence of the professional relation of the witness with the firm as previously stated and proceeded to do so. After testimony had been given and documentary evidence introduced without objection, tending to show the existence of the relation of attorney and client between the witness and the firm of Tornabells & Co., in accordance with the previous declaration as to what was proposed to be proven on that subject, the court interrupted the taking of the testimony as follows:

The Court: It doesn't change the court's mind as to admitting the testimony in the way it intimates. It will let it in.

"Mr. Dexter: I desire to except against that ruling.

"The Court: Give an exception to all counsel that wish it.

"Mr. Dexter: I want my objection to clearly appear: (1) It is incompetent because of the relation of attorney and client; (2) It is incompetent under the United States statute; and (3) Because of the party being dead.

"Mr. Boerman: I want an exception to every question given."

The witness Cornwell was then recalled and was fully examined and cross-examined, not only in regard to the alleged statements, but as to his professional relations with the firm of Tornabells & Co. when the statements as to which he testified were made, and thereafter up to or nearly about the time of the bringing of this suit.

Beyond question, the testimony established that the witness had been the confidential legal adviser of the firm of Tornabells & Co. up to and at the time when the statements as to which he testified were made. Without reproducing the testimony as to the statements, we think it suffices to say that on the examination-in-chief of the witness he repeated a conversation had with both members of Tornabells & Co. a short while before the making of the conveyance to Aran y Lanci and the mortgage by the latter of the property, which conversation was occasioned by the fact that the members of the firm called upon the witness as their legal adviser, either to consult him or to state to him the purpose of the firm to convey or mortgage its property, and that the witness, on his examination, stated that he construed the statements made to him by his clients as unfolding a purpose on their part to make a simulated transfer of their property to defraud their creditors, and that he, the witness, declared he could not represent them in the matter or have anything to do with it. The second statement testified to a conversation had with Doitteau, one of the members of the firm, after

the assailed conveyance and mortgage had been put upon the record, which the witness considered was an admission by Doitteau of the fraud and an explanation on the ground that he consented to it because of the influence of his partner Tornabells. It is also true, however, that the statements made by the witness on cross-examination tended to qualify the impression as to the conversation resulting from his statements-in-chief, and to indicate that the purpose of the members of the firm, as disclosed by them in the conversation, was either to sell or mortgage their property in order to raise money to apply to their debts, and that the witness thought that this purpose was illegal, because it was intended with the funds which might be raised to prefer particular creditors. It was established that at the time of the first conversation the witness, although the attorney of the firm, had to its knowledge the claim of one of its creditors in his hands professionally. It was also stated that after the conversations above referred to and after the witness had knowledge of the existence of the assailed conveyance and mortgage, he continued both to have personal and professional relations with the firm. He brought a number of suits in its behalf during the two years which elapsed between the making of the assailed conveyance and mortgage and the bringing of this suit. In fact, the claim which was in the witness' hands at the time of the conversation with the members of the firm was some time afterwards merged to judgment by a confession by the members of the firm, which was written in the office of the witness by one of his associates. Precisely when the witness became the counsel for all the complainants does not exactly appear, but certain is it that he stated in his testimony that he was to receive a large contingent fee, amounting in several of the cases to fifty per cent of the amount recovered. The case, as we have at the outset said, was decided some months after its submission, and six months thereafter the statement of facts to which we have referred, accompanied with extracts from the evidence, was

certified by the court. After reproducing in the statement the extracts from the testimony the court said:

"As appears from the above the court tentatively allowed the foregoing evidence of said witness Cornwell to be admitted, but subsequently, upon the consideration of the testimony as a whole and upon making its findings of fact and law and rendering its decision herein, the court did determine and rule that defendants' objections to the testimony of said witness, Cornwell, in so far as same related to conversations between said witness and Joaquin Tornabells, Carlos Doitteau and Luis Aran, should be sustained and said testimony excluded, because the plan outlined by said Tornabells during said conversation did not constitute a fraud upon creditors under the laws of Porto Rico at that time in force, hence the privilege existing as to confidential communications between attorney and client was applicable thereto, and further, because such testimony involved admissions of a dead man against the interests of his own heirs, who are parties to the suit."

It is upon this statement that the contention is based that the court illegally rejected the testimony of the witness Cornwell. But, when the statement is accurately considered, it appears that instead of rejecting the testimony the court weighed and considered it, and but declared that on its face it did not tend to establish a fraud within the meaning of the Porto Rico law, and hence that the statements were privileged. As the fraud on the part of the firm of Tornabells & Co. which was charged in the bill, and the fraud which it was insisted was demonstrated by the statements made to the witness were in substance one and the same, it necessarily follows that the finding of the court, that the statements testified to did not tend to show the fraud which it was asserted they did show, was but an expression of the conclusion of the court upon the facts involved in the merits of the controversy, and therefore is embraced in its finding of fact which we may not review. If, however, we could otherwise consider the action of the court, we are constrained to say, upon an examination of the

testimony of the witness, made part of the certificate, that we think the court was right in concluding that the testimony did not establish a sufficient foundation to relieve the witness from the obligation resting upon him as the result of his professional relations.

The error which it is insisted the court committed as to the statements of the widow of Tornabells need only be briefly noticed. In the course of his examination the witness Cornwell was asked concerning statements made to him by Mrs. Tornabells of conversations which she stated she had with her husband, tending to show that the assailed contracts were simulated, the statements to the witness having been made after the death of Mr. Tornabells. In reference to the motives which induced Mrs. Tornabells to make to him the statements about which the witness was asked, he said that she represented herself to be in great pecuniary distress and was desirous of ascertaining whether she and her children could not in some way be benefited if the pending suit assailing the conveyance and mortgage of the property was successful. Indeed, on cross-examination, the witness said:

"Q. Is it a fact, Mr. Cornwell, that a contract was made between your firm and this woman to give her either money or property?

"A. If it was, it was made afterwards by Judge Pettingill and Mr. Horton.

"Q. I am asking you if it was.

"A. I don't know. I am out at the mill the most of the time."

On objection being made to the witness testifying to the statements of Mrs. Tornabells as to the conversations with her deceased husband, the court declared that the objection would be overruled *pro forma*, with a right to sustain it later, and gave counsel for the defendants an exception. Thereupon the counsel for the complainants declared as follows:

"I want to get on the record that it is not claimed by the complainants that this statement, whatever it may be, made

by the widow of Tornabells as a defendant in this case, binds any defendant or is admissible against any defendant except herself and the minor children whom she represents."

After this declaration the witness testified as to the statements made to him by Mrs. Tornabells concerning conversations with her husband, the substance of which tended to show that the assailed contracts were fraudulent simulations. Although the testimony was thus in the case when it was submitted to the court for decision, in its certificate appended to the statement of facts to which we have already referred the court said that in disposing of the case it, in effect, concluded that the statement by Mrs. Tornabells as to the conversations with her husband were inadmissible, because they were hearsay, Mrs. Tornabells not having been called as a witness, and because, in any event, it was incompetent to establish the want of good faith in written contracts made by a deceased person by repeating conversations had with him during his lifetime. Conceding that the action of the court can be construed as indicating that it rejected the testimony instead of simply weighing it, and found it insufficient to prove the alleged fraud, we think it suffices to say, without further elaboration, that the reasons stated by the court are, on their face, adequate to sustain its conclusion. Besides, as the testimony of the witness Cornwell concerning the statements made by the widow Tornabells was offered only as against her and her children and not against the other defendants, it clearly results that no prejudicial error could in any event have resulted from the ruling, even on the hypothesis that the administratrix was competent by a mere admission to injuriously affect the estate of her minor children, which the court made, in view of its finding as to the rights of the other defendants.

Affirmed.